

**In the Matter of:**

**CDK Global & Reynolds and Reynolds**

*September 18, 2019*

*Robert Brockman*

**Condensed Transcript with Word Index**



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<p>1 FEDERAL TRADE COMMISSION</p> <p>2</p> <p>3 In the Matter of: )</p> <p>4 CDK GLOBAL, ) File No.</p> <p>5 a corporation, ) 171-0056</p> <p>6 And )</p> <p>7 REYNOLDS AND REYNOLDS, )</p> <p>8 a corporation. )</p> <p>9</p> <p>10</p> <p>11 Wednesday, September 18, 2019</p> <p>12</p> <p>13 Sheppard Mullin</p> <p>14 2099 Pennsylvania Avenue, N.W.</p> <p>15 Washington, D.C. 20006</p> <p>16</p> <p>17 The above-entitled matter came on for</p> <p>18 investigational hearing, pursuant to notice, at 9:05</p> <p>19 a.m., for the testimony of:</p> <p>20</p> <p>21 ROBERT BROCKMAN</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Reported by: Deborah Wehr, RPR</p>	<p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION BY: PAGE</p> <p>4 Mr. Abrahamsen 5</p> <p>5</p> <p>6</p> <p>7 EXHIBIT DESCRIPTION PAGE</p> <p>8 CX 4468 NADA e-mail 40</p> <p>9 CX 2250 ADP initial reply 47</p> <p>10 CX 4043 Talking points 51</p> <p>11 CX 4515 Captcha codes 67</p> <p>12 CX 4004 Invalid login e-mail 73</p> <p>13 CX 1151 ADP agreement 76</p> <p>14 CX 4035 Talking points 99</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
2	4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:</p> <p>4 DANA F. ABRAHAMSEN, ESQUIRE</p> <p>5 J. ALEXANDER ANSALDO, ESQUIRE</p> <p>6 MICHAEL WILLIAMS, ECONOMIST</p> <p>7 Federal Trade Commission</p> <p>8 600 Pennsylvania Avenue, N.W.</p> <p>9 Washington, D.C. 20580</p> <p>10 (202) 326-3695</p> <p>11 dabrahamansen@ftc.gov</p> <p>12</p> <p>13</p> <p>14 ON BEHALF OF REYNOLDS &amp; REYNOLDS:</p> <p>15 MICHAEL P.A. COHEN, ESQUIRE</p> <p>16 Sheppard, Mullin, Richter &amp; Hampton, LLC</p> <p>17 2099 Pennsylvania Avenue, N.W.</p> <p>18 Suite 100</p> <p>19 Washington, D.C. 20006</p> <p>20 (202) 747-1958</p> <p>21 mcohen@sheppardmullin.com</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24 SCOTT CHERRY</p> <p>25 JON EMMANUAL</p>	<p>1 P R O C E E D I N G S</p> <p>2 - - - - -</p> <p>3 MR. ABRAHAMSEN: This proceeding will come to</p> <p>4 order. This hearing has been convened on Wednesday,</p> <p>5 September 18th, at approximately 9:00 a.m. at the</p> <p>6 Sheppard Mullin Law Firm at 2099 Pennsylvania Avenue,</p> <p>7 Northwest. We will proceed under the Federal Trade</p> <p>8 Commission's rules that are applicable that we've read</p> <p>9 into the record several times. Is that amenable to</p> <p>10 you, counsel?</p> <p>11 MR. COHEN: It is. We agree to that. Thank</p> <p>12 you.</p> <p>13 MR. ABRAHAMSEN: Mr. Brockman, are you</p> <p>14 represented by counsel today?</p> <p>15 MR. BROCKMAN: Yes.</p> <p>16 MR. ABRAHAMSEN: Who is your counsel?</p> <p>17 MR. COHEN: Mr. Brockman is pointing down the</p> <p>18 row. We'll introduce ourselves for the record, if that</p> <p>19 is helpful, Mr. Abrahamsen.</p> <p>20 MR. ABRAHAMSEN: Yes.</p> <p>21 MR. COHEN: My name is Michael Cohen with the</p> <p>22 law firm Sheppard Mullin, and I represent Universal</p> <p>23 Computer Systems, the Reynolds and Reynolds Company,</p> <p>24 and Mr. Brockman today.</p> <p>25 MR. NAIK: My name is Amar Naik of Sheppard</p>

<p style="text-align: right;">5</p> <p>1 Mullin.</p> <p>2 MR. CHERRY: Scott Cherry, general counsel of</p> <p>3 the Reynolds and Reynolds Company.</p> <p>4 MR. EMMANUAL: Jon Emmanuel, in-house counsel</p> <p>5 for Reynolds and Reynolds Company.</p> <p>6 MR. ABRAHAMSEN: Thank you. I'm Dana</p> <p>7 Abrahamsen. I represent the Federal Trade Commission.</p> <p>8 I'll be asking most of the questions today and</p> <p>9 tomorrow. And I would ask my colleagues to introduce</p> <p>10 themselves for the record.</p> <p>11 MR. ANSALDO: I'm Alex Ansaldo. I'm also a</p> <p>12 lawyer with the FTC.</p> <p>13 MR. WILLIAMS: My name is Mark Williams. I'm</p> <p>14 an economist with the Federal Trade Commission.</p> <p>15 Whereupon --</p> <p>16 ROBERT BROCKMAN,</p> <p>17 a witness, called for examination, having been</p> <p>18 first duly sworn, was examined and testified as</p> <p>19 follows:</p> <p>20 EXAMINATION</p> <p>21 BY MR. ABRAHAMSEN:</p> <p>22 <b>Q. Thank you, Mr. Brockman, very much for coming</b></p> <p>23 <b>to Washington to sit for this hearing. We appreciate</b></p> <p>24 <b>it very much. We'll be doing part of the hearing</b></p> <p>25 <b>today. We'll finish up tomorrow morning and go until</b></p>	<p style="text-align: right;">7</p> <p>1 A. Again, my name is Bob Brockman. The original</p> <p>2 company which lives on today as the top of a holding</p> <p>3 company I started in the living room of my house with</p> <p>4 my wife in 1970, 49 years ago. As a matter of fact,</p> <p>5 September 1st is what we recognize as the anniversary</p> <p>6 date.</p> <p>7 Before that I worked for IBM for five years</p> <p>8 selling basically services. I gravitated to car</p> <p>9 dealerships because I felt comfortable around them. My</p> <p>10 specialty was parts inventory control. It was in the</p> <p>11 early days when you used to use card systems to keep</p> <p>12 track of parts and you had tubs and trays and sometimes</p> <p>13 slide-outs where you -- when you sold a part you had to</p> <p>14 go find where it is physically in the card system and</p> <p>15 record the date and how many were sold and carry</p> <p>16 forward the balance.</p> <p>17 <b>Q. So did you use your experiences at IBM to turn</b></p> <p>18 <b>this card-based system into a computer-based system?</b></p> <p>19 A. Yes. I was a salesman, and I sold it and</p> <p>20 installed it. There was a very, very early version</p> <p>21 that ran on, I believe, a 12K computer that would fill</p> <p>22 up half this room.</p> <p>23 <b>Q. And what was the name of the company that you</b></p> <p>24 <b>founded?</b></p> <p>25 A. Universal Computer Services.</p>
<p style="text-align: right;">6</p> <p>1 1:00 today and 1:00 tomorrow afternoon, as I understand</p> <p>2 the schedule.</p> <p>3 You have been through this procedure before, I</p> <p>4 know, so I won't spend too much time on the</p> <p>5 preliminaries. The biggest problem we have in these</p> <p>6 proceedings is it's not like a normal conversation.</p> <p>7 You have to wait for me to get my whole question out.</p> <p>8 I have to stop so she can get the whole question down.</p> <p>9 And I have to listen to your whole answer before asking</p> <p>10 my next question. If we talk over each other, she'll</p> <p>11 remind us to stop doing that.</p> <p>12 We will take breaks during the course of our</p> <p>13 hearing today and tomorrow. I will call for a break</p> <p>14 when I get to a good stopping point or you or your</p> <p>15 counsel can call for a break. The only ground rule we</p> <p>16 have there is that we don't take a break while a</p> <p>17 question is pending. We just answer the question and</p> <p>18 then we take our break.</p> <p>19 If I ask any questions that you don't</p> <p>20 understand, you want me to rephrase it or we can have</p> <p>21 her read them back, that's perfectly okay during the</p> <p>22 course of our proceeding.</p> <p>23 And with that, let me let you introduce</p> <p>24 yourself and explain your position with your current</p> <p>25 employer.</p>	<p style="text-align: right;">8</p> <p>1 <b>Q. And I think I have seen that referred to by its</b></p> <p>2 <b>initials, UCS?</b></p> <p>3 A. Yes, that's correct.</p> <p>4 <b>Q. When did you become a maker of what we would</b></p> <p>5 <b>refer to as a DMS, dealer management system software?</b></p> <p>6 A. Well, to go all the way back to the beginning</p> <p>7 of how it started and why it started, I went to work</p> <p>8 for IBM in January 10, 1966, for sales training, and in</p> <p>9 Houston branch office of the IBM Service Bureau. There</p> <p>10 were a number of applications, what they call</p> <p>11 preplanned software or prepackaged software in those</p> <p>12 days. They covered things like credit unions,</p> <p>13 brokerage firms, CPA firms. And then they had two</p> <p>14 applications for car dealerships which I would describe</p> <p>15 as version 1. They had a parts inventory system and an</p> <p>16 accounting package.</p> <p>17 As I have said just a minute or so ago, I'm</p> <p>18 very familiar with car dealerships. I grew up on a</p> <p>19 small used car lot with my dad, and I went with him in</p> <p>20 my teenage years to things like car auctions. I went</p> <p>21 to new car dealerships to see if they had some older</p> <p>22 model stuff that they would like to sell.</p> <p>23 At the same time, I started reconditioning</p> <p>24 cars. Originally it was washing and waxing them, but</p> <p>25 then it evolved into curing rust. Rust was a real</p>

<p style="text-align: right;">9</p> <p>1 problem in those days.</p> <p>2 <b>Q. And would you consider the IBM software</b></p> <p>3 <b>packages that you just mentioned, the parts and the</b></p> <p>4 <b>accounting, would you consider those a DMS or did DMS</b></p> <p>5 <b>apply to something later?</b></p> <p>6 A. They were the early stages. Those two</p> <p>7 applications are key applications even yet today.</p> <p>8 Accounting and parts are two of the major, probably --</p> <p>9 I consider there's probably eight applications that are</p> <p>10 in what is considered a DMS today.</p> <p>11 <b>Q. So how would you describe a DMS today?</b></p> <p>12 A. It's an ERP system for car dealers, and it's</p> <p>13 highly specialized to how car dealers operate.</p> <p>14 <b>Q. And what was the acronym you just used?</b></p> <p>15 A. ERP.</p> <p>16 <b>Q. What's that stand for?</b></p> <p>17 A. That stands for enterprise reporting.</p> <p>18 <b>Q. When you were at UCS, were there particular</b></p> <p>19 <b>kinds of car dealerships that you tried to focus on</b></p> <p>20 <b>when you first entered the DMS business?</b></p> <p>21 A. General Motors.</p> <p>22 <b>Q. And why was that?</b></p> <p>23 A. They have a very, very compact part number.</p> <p>24 It's typically nine digits. It's all numeric. It's</p> <p>25 much easier to work with than, say, Ford. Ford has a</p>	<p style="text-align: right;">11</p> <p>1 well, it's not. She said, okay, I just wanted to</p> <p>2 understand for sure.</p> <p>3 <b>Q. So at the time UCS and Reynolds merged</b></p> <p>4 <b>together, who were the other companies that made DMSes?</b></p> <p>5 A. It was a part of ADP, a division of ADP. There</p> <p>6 was a small DMS provider out of Salt Lake City. I</p> <p>7 would say as far as a complete DMS, there was just</p> <p>8 handful.</p> <p>9 <b>Q. And in this time period, right at the time of</b></p> <p>10 <b>the merger, what would you estimate the market shares</b></p> <p>11 <b>of the various DMS players to have?</b></p> <p>12 A. Probably immediately after the merger, Reynolds</p> <p>13 and Reynolds, we didn't abandon the old name. We just</p> <p>14 quit using it. We used the Reynolds and Reynolds name</p> <p>15 because it's 150 years old and it's well known. But I</p> <p>16 would say probably somewhere in the 40 percent area,</p> <p>17 mid 40s.</p> <p>18 <b>Q. And what about ADP's market share at that time?</b></p> <p>19 A. Probably like 30, 35 percent.</p> <p>20 <b>Q. Who would have been the number 3 in the</b></p> <p>21 <b>industry at that time?</b></p> <p>22 A. I don't remember. Those smaller companies kind</p> <p>23 of come and go, and I don't remember who the other</p> <p>24 ones -- there were several others, but again, very</p> <p>25 small. And they would be a borderline whether or not</p>
<p style="text-align: right;">10</p> <p>1 part number which can be as long as 17 characters and</p> <p>2 has alphabetical components. And the Ford system, Ford</p> <p>3 dealers like that because you can look at a part number</p> <p>4 and you can tell what year model, what year model Ford</p> <p>5 it is, which Ford, is it a truck number, is it a</p> <p>6 four-door sedan number, is it a Mustang number.</p> <p>7 <b>Q. So the General Motors ones, being all numeric,</b></p> <p>8 <b>were easier to put into the computer?</b></p> <p>9 A. That's right.</p> <p>10 <b>Q. In terms of -- let me ask you to fast forward</b></p> <p>11 <b>and tell me about the acquisition of Reynolds.</b></p> <p>12 A. What would you like to know?</p> <p>13 <b>Q. Why did you buy it?</b></p> <p>14 A. It can be best described as I was on safari in</p> <p>15 Africa, and one of my hunter fellows came and woke me</p> <p>16 up in the middle of the night and said, Mr. Brockman,</p> <p>17 Mr. Brockman, wake up, big tiger, get your gun.</p> <p>18 And that's the reason why I did it. They were</p> <p>19 my major competitor, and the thought -- well, at first</p> <p>20 it kind of terrified me. The more I thought about it,</p> <p>21 it was really feasible from a financial standpoint.</p> <p>22 And it represented, again, the biggest tiger that I</p> <p>23 ever faced, and that's why I did it.</p> <p>24 My wife asked me, she said, tell me how our</p> <p>25 life is going to be better because of this. I said,</p>	<p style="text-align: right;">12</p> <p>1 their product really could be considered a DMS.</p> <p>2 <b>Q. What would be it be considered if it wasn't</b></p> <p>3 <b>considered DMS?</b></p> <p>4 A. An accounting system.</p> <p>5 <b>Q. In the time that you have been in charge of the</b></p> <p>6 <b>combined entities of Reynolds and UCS, have you tried</b></p> <p>7 <b>to focus on larger dealerships?</b></p> <p>8 A. Yes. The small dealerships are marginally</p> <p>9 profitable because they don't use very many software</p> <p>10 packages because they are located in some small town</p> <p>11 where they know everybody already and they can stand up</p> <p>12 and look out the front window and see their inventory.</p> <p>13 They don't need software packages for that sort of</p> <p>14 thing.</p> <p>15 It takes a lot of travel. There's a lot of</p> <p>16 what we call bug crushing time. You got to go from one</p> <p>17 place to another place to another. So we focus on</p> <p>18 bigger dealerships, more complex, and we find that the</p> <p>19 smaller dealerships can get by with a lesser product.</p> <p>20 The bigger dealers which are now more and more -- were</p> <p>21 one physical person will own now five dealerships, we</p> <p>22 see 10, 15, 20, 25 where they are consolidating smaller</p> <p>23 dealerships to gain scale.</p> <p>24 <b>Q. You said in that answer that the smaller</b></p> <p>25 <b>dealerships are marginally profitable. Did you mean</b></p>

<p style="text-align: right;">13</p> <p>1 <b>for Reynolds as having them as a client?</b></p> <p>2 A. Yes, as well as for themselves.</p> <p>3 <b>Q. Has Reynolds been successful in its attempt to</b></p> <p>4 <b>focus on large dealerships?</b></p> <p>5 A. Not completely, but certainly we've made some</p> <p>6 real progress. We have the number 2 largest public</p> <p>7 chain which is the Penske Group. And then we have the</p> <p>8 largest private group which is Hendrick Motor Sports.</p> <p>9 <b>Q. What would you define as the larger</b></p> <p>10 <b>dealerships?</b></p> <p>11 A. Ones that have bigger physical facilities,</p> <p>12 bigger inventory, sell more cars per year, have more</p> <p>13 employees.</p> <p>14 <b>Q. Is there in your mind a number of rooftops that</b></p> <p>15 <b>is sort of a dividing line between larger dealerships</b></p> <p>16 <b>and medium-sized or smaller dealerships?</b></p> <p>17 A. A small dealership would be something, an</p> <p>18 entity that sells less than 50 new vehicles per month.</p> <p>19 That would be considered a small dealership. A large</p> <p>20 begins -- probably to be a truly large single-point</p> <p>21 dealership would be somebody that sells 400 new cars a</p> <p>22 month. And one thing I would like to make sure is</p> <p>23 understood, I consider rooftops a very poor measure of</p> <p>24 market penetration.</p> <p>25 <b>Q. Why is that?</b></p>	<p style="text-align: right;">15</p> <p>1 are better engineered applications. And the goal is to</p> <p>2 provide the management tools that help a dealer operate</p> <p>3 profitably above all else.</p> <p>4 <b>Q. When you say they are better engineered</b></p> <p>5 <b>applications, do they have proprietary software to</b></p> <p>6 <b>Reynolds?</b></p> <p>7 A. No. We build all our own software.</p> <p>8 <b>Q. Is there software that Reynolds provides that</b></p> <p>9 <b>helps a dealership that has multiple different OEMs</b></p> <p>10 <b>that they serve have consolidated accounting across all</b></p> <p>11 <b>their --</b></p> <p>12 A. No. And especially what I call side-by-side</p> <p>13 reporting where we have a report that's this wide and</p> <p>14 you have dealership number 1 numbers, dealership number</p> <p>15 2 numbers, dealership number 3 numbers and where you</p> <p>16 can see what's going on kind of at a glance. And then</p> <p>17 we also consolidate for financial reporting.</p> <p>18 <b>Q. Why is it other DMSes can't provide that kind</b></p> <p>19 <b>of information?</b></p> <p>20 A. They can but it's a struggle. Whereas, our</p> <p>21 software, you press the button and you get the display</p> <p>22 instantly. Our accounting system is instant update.</p> <p>23 In management, particularly of multiple dealerships,</p> <p>24 the ability to push a button and see all this on the</p> <p>25 screen and print it off is very advantageous.</p>
<p style="text-align: right;">14</p> <p>1 A. Well, as a private company, the only things</p> <p>2 that count as far as I'm concerned is net profit.</p> <p>3 Sales dollars is very much less important. The whole</p> <p>4 goal is to produce a quality product and sell it to big</p> <p>5 guys, and that means that I will forever trail</p> <p>6 rooftops, and not deservedly so. Of course, I don't</p> <p>7 publish financial statements, so I just have to accept</p> <p>8 the fact that everybody will think that we are smaller.</p> <p>9 <b>Q. So the better measure for you, rather than</b></p> <p>10 <b>rooftops, would be the total sales that the dealership</b></p> <p>11 <b>has? Would that be a factor you would look at?</b></p> <p>12 A. Yes, certainly a larger dealership would be a</p> <p>13 better prospect for us. They would be more apt to need</p> <p>14 and want advanced software.</p> <p>15 <b>Q. When you say advanced software in that answer,</b></p> <p>16 <b>what are you referring to?</b></p> <p>17 A. Well, the basic software was accounting, parts,</p> <p>18 service, inventory, financing, factory communications,</p> <p>19 payroll, human resources management, just a larger</p> <p>20 number. In some cases as many as 25 or 30 different</p> <p>21 applications would be sold for an individual rooftop.</p> <p>22 <b>Q. And what capability does Reynolds have to serve</b></p> <p>23 <b>these large dealerships that, say, some other DMS</b></p> <p>24 <b>company wouldn't have?</b></p> <p>25 A. We just have more, and they are better. They</p>	<p style="text-align: right;">16</p> <p>1 Dealerships are -- they are different than your typical</p> <p>2 business in that they measure things literally by the</p> <p>3 hour. Dealerships are very thinly profitable. They</p> <p>4 operate on a 1-1/2, 2 percent margin. And if we don't</p> <p>5 have good sales this Saturday, then we miss our target,</p> <p>6 we've got to take action so that we have more sales</p> <p>7 next week to make up for the fact that we didn't hit</p> <p>8 our numbers this week. So the interest and need for</p> <p>9 realtime kind of information to drive a dealership, if</p> <p>10 you think of it as a ship, daily or weekly or monthly,</p> <p>11 that kind of numbers don't really cut it. You got to</p> <p>12 have right-now kind of stuff.</p> <p>13 <b>Q. When your sales force is talking a large</b></p> <p>14 <b>dealership, do you explain to them that you have</b></p> <p>15 <b>capabilities that other DMS providers don't have?</b></p> <p>16 A. That's the goal. I teach our salespeople</p> <p>17 forget being a salesman because you don't sell this</p> <p>18 kind of stuff. I mean, people buy it, but you are not</p> <p>19 going to hammer through and convince them to buy your</p> <p>20 stuff. What you do is you teach. You teach how your</p> <p>21 stuff works and you teach them how it can be used in</p> <p>22 various segments of their business to earn more</p> <p>23 profitability.</p> <p>24 <b>Q. What would be some of the things you would be</b></p> <p>25 <b>teaching a dealership in terms of your DMS's capability</b></p>



<p style="text-align: right;">17</p> <p>1 <b>that is superior to other DMSes in the marketplace?</b></p> <p>2 A. I would say the first and probably most</p> <p>3 important thing we talk about is we refer to it as</p> <p>4 built as one, works as one. So you can have multiple</p> <p>5 applications, but they talk to each other, which</p> <p>6 eliminates a lot of data entry. It makes the ability</p> <p>7 to produce a report that has information from multiple</p> <p>8 packages all showing on a screen at once.</p> <p>9 <b>Q. What other DMSes are most capable of also</b></p> <p>10 <b>servicing the large dealerships?</b></p> <p>11 A. It would be CDK.</p> <p>12 <b>Q. And what is it that CDK has that, say, the</b></p> <p>13 <b>other ones in the market don't have?</b></p> <p>14 A. They have a lot of historical -- they have been</p> <p>15 in business for a long time. Again, this is back to</p> <p>16 the issue of how do you define market share. If you</p> <p>17 define market share by rooftops, they will sell them</p> <p>18 any size, including the little bitty ones just to get</p> <p>19 rooftop counts because that's what pleases the</p> <p>20 analysts. As a public company, they have to chase that</p> <p>21 number.</p> <p>22 <b>Q. Are there arguments or teaching moments that</b></p> <p>23 <b>you have your sales reps do to explain what the</b></p> <p>24 <b>features are of the Reynolds DMS that other smaller DMS</b></p> <p>25 <b>companies just simply can't replicate?</b></p>	<p style="text-align: right;">19</p> <p>1 A. Well, probably one of the more important places</p> <p>2 is car deals, transaction documents and the sale of a</p> <p>3 vehicle. You would think you would get all that done</p> <p>4 on one page. Well, it's more like 30 or 35 pages,</p> <p>5 especially when there's financing involved. And from a</p> <p>6 process standpoint, when a car sale occurs 90-plus</p> <p>7 percent of the time it's going to be financed. And a</p> <p>8 very large percentage of that group will be financed</p> <p>9 with what we call the captive finance companies.</p> <p>10 That's Toyota Motor Credit, Ford Motor Credit.</p> <p>11 The mechanical process is that while the forms</p> <p>12 are prepared by typically an electric typewriter hooked</p> <p>13 to a computer that actually types, fills in all the</p> <p>14 blanks, it gets signed up, and then every day FedEx</p> <p>15 packages go from the dealership to the lender. And if</p> <p>16 they are doing five lenders, well, it would be five</p> <p>17 daily FedEx packages. And it arrives into a big puddle</p> <p>18 of clerks that open the FedEx packages and they take</p> <p>19 out the loan documents, and they commence to go through</p> <p>20 the loan documents to make sure everything is</p> <p>21 completed.</p> <p>22 If everything works good, the typical</p> <p>23 turnaround time is 12 days before the dealer actually</p> <p>24 gets the money from the finance source. In the</p> <p>25 meantime, he has to pay off his floor plan daily. For</p>
<p style="text-align: right;">18</p> <p>1 A. Absolutely. I mean, that's what we are looking</p> <p>2 for. Car dealers are an interesting lot. Over the</p> <p>3 time that I have been in the business, where a car</p> <p>4 dealer is born, they are born as car salesmen. And</p> <p>5 they are very successful car salesmen. They accumulate</p> <p>6 enough nest egg so they can actually buy their own</p> <p>7 dealership. They are, frankly, in most cases, have no</p> <p>8 formal education past high school. They are physically</p> <p>9 attractive. They are very people sensitive. Their</p> <p>10 whole goal is to get the person who is interested in</p> <p>11 buying a car to like them and have personal rapport.</p> <p>12 But so the challenge that we face is getting</p> <p>13 enough teaching time. The way that I was successful</p> <p>14 back in the beginning, I was not ever a salesman. I</p> <p>15 never held myself out as a salesman. I was an</p> <p>16 inventory system consultant. That was what my business</p> <p>17 card said. And if I could get five minutes with a</p> <p>18 prospect, that would give me all the time that I need,</p> <p>19 all the audience that I need because they were</p> <p>20 convinced that I knew what I was talking about.</p> <p>21 <b>Q. So aside from built as one, works as one and</b></p> <p>22 <b>the capability to call up more information on the</b></p> <p>23 <b>computer screen, what other attributes does Reynolds</b></p> <p>24 <b>teach the dealership about that makes its product</b></p> <p>25 <b>superior?</b></p>	<p style="text-align: right;">20</p> <p>1 every car that leaves the lot, it's got to be paid off</p> <p>2 within 24 hours. So there's a big stretch in there</p> <p>3 that takes a lot of working capital.</p> <p>4 What happens if something is not initialled</p> <p>5 properly? It goes back in another FedEx package back</p> <p>6 to the dealership. The dealership then opens it up,</p> <p>7 figures out what's wrong, and nine times out of ten,</p> <p>8 they have to ask the consumer to come back to the</p> <p>9 dealership to sign a new -- that is never, ever easy</p> <p>10 because consumers don't want to do that. If there's a</p> <p>11 little more money involved, it's even worse.</p> <p>12 <b>Q. So is that a procedure that the Reynolds DMS</b></p> <p>13 <b>can handle more seamlessly than one of the smaller DMS</b></p> <p>14 <b>companies?</b></p> <p>15 A. Exactly. We have a product which we call</p> <p>16 DocuPad. It is about 4-1/2 feet probably and 30 inches</p> <p>17 wide, and it has a 32-inch video screen. And the whole</p> <p>18 transaction takes place on the video screen. And the</p> <p>19 customer actually drives it. They have their own</p> <p>20 stylus and they click on this, click on that. The end</p> <p>21 result is you have a complete electronic document. And</p> <p>22 we know on every document where it's got to be</p> <p>23 initialled, where it's got to be signed. If it's not</p> <p>24 initialled and signed, we won't let it go. So that</p> <p>25 means the flow going to the finance company is clean,</p>

<p style="text-align: right;">21</p> <p>1 and you don't have where something is missing and it's</p> <p>2 got to be sent back to the dealership and the consumer</p> <p>3 has got to come back in. We just cut all that out.</p> <p>4 <b>Q. Is this DocuPad a product that Reynolds lets</b></p> <p>5 <b>dealerships use that are not using a Reynolds DMS?</b></p> <p>6 A. No. It is actually built into Reynolds' DMS.</p> <p>7 The calculations, for instance, that show on the screen</p> <p>8 are really from our standard finance package, all the</p> <p>9 rate calculations, the payment calculations. It's all</p> <p>10 part of our main F&amp;I system.</p> <p>11 <b>Q. So that would be proprietary to Reynolds?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Can you give us another example of a feature</b></p> <p>14 <b>that Reynolds has when you are educating the dealer</b></p> <p>15 <b>about why they should go with Reynolds rather than one</b></p> <p>16 <b>of the smaller DMS companies?</b></p> <p>17 A. Probably another example is actually a fairly</p> <p>18 old example, but it's still really, really true. In</p> <p>19 the parts system, we actually prepare the parts</p> <p>20 invoice, which means that the parts department employee</p> <p>21 keys in the account number for the customer, and then</p> <p>22 they key in the part number for each part that's sold</p> <p>23 all in a blank. The inventory levels are reduced on</p> <p>24 those parts that have been sold. But probably more</p> <p>25 importantly is, and that's it's made possible what we</p>	<p style="text-align: right;">23</p> <p>1 for instance, this type of customer I just described,</p> <p>2 he doesn't get any discount at all. But if there's</p> <p>3 another type of customer who you are fighting with a</p> <p>4 competitor to sell to, the discount is going to be very</p> <p>5 finely regulated, just a hair less expensive than the</p> <p>6 competitive dealership.</p> <p>7 <b>Q. And this is a system that Reynolds has</b></p> <p>8 <b>developed internally?</b></p> <p>9 A. Over the years. I actually developed it in a</p> <p>10 system that goes back to like 1975.</p> <p>11 <b>Q. You mentioned in a prior answer that -- I don't</b></p> <p>12 <b>think I followed your answer completely, but you were</b></p> <p>13 <b>mentioning a screen where a dealership had side-by-side</b></p> <p>14 <b>dealerships, I believe, is the phrase you used.</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. You were describing something that was going to</b></p> <p>17 <b>come up on the screen when they pushed one button. I</b></p> <p>18 <b>don't think I followed what your explanation was.</b></p> <p>19 A. Again, this is specific and unique to</p> <p>20 dealerships. They have a concept called daily</p> <p>21 operating control. And what that is, that is not a</p> <p>22 true financial statement but their best guess as where</p> <p>23 they are at as far as sales and profit every month</p> <p>24 compared to their goal where they want to be at the end</p> <p>25 of the month when the formal financial statement is</p>
<p style="text-align: right;">22</p> <p>1 call matrix pricing.</p> <p>2 <b>Q. What's matrix pricing?</b></p> <p>3 A. It means that you end up with differing prices</p> <p>4 to the end user.</p> <p>5 <b>Q. Differing prices based on what?</b></p> <p>6 A. Based upon what matrix that has been assigned</p> <p>7 to them. Basically what happens is that the parts</p> <p>8 department, as things get continually squeezed, as they</p> <p>9 always do, they have put some severe thought into how</p> <p>10 much it costs them to service different types of</p> <p>11 customers. The worst type of customer is the guy that</p> <p>12 comes in on Saturday, he had something broken on his</p> <p>13 car but he doesn't have the part number. So he says, I</p> <p>14 have got such-and-such kind of car and I need the</p> <p>15 thingamabob. And they start going through the</p> <p>16 electronic parts catalogs looking at pictures, and he</p> <p>17 says, there, that's the thing I want.</p> <p>18 And lots of times the dealership doesn't have</p> <p>19 the part, but lots of times it does and they'll</p> <p>20 complete the sale. About half the time those parts</p> <p>21 come back on Monday returned for credit.</p> <p>22 <b>Q. Is this parts system that you have built,</b></p> <p>23 <b>that's something you can only get with a Reynolds DMS?</b></p> <p>24 A. The parts invoicing system is an integral piece</p> <p>25 of the whole system. And what it does is it decides,</p>	<p style="text-align: right;">24</p> <p>1 published.</p> <p>2 But they want to know -- a multi dealer, he</p> <p>3 wants to know if, say, he has five dealerships, he</p> <p>4 wants to know how the whole fleet is going. And so</p> <p>5 this is the ability to press the button and have the</p> <p>6 daily operating control numbers, which is as close as</p> <p>7 you are going to get to a financial statement</p> <p>8 approximation, to have those displayed on the screen</p> <p>9 simultaneously side by side. And there's different</p> <p>10 formats. You could have instead of just one column per</p> <p>11 dealer, you might have three columns per dealer.</p> <p>12 <b>Q. And this was a process that was developed</b></p> <p>13 <b>internally at Reynolds?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. And this is a process that you can't get if you</b></p> <p>16 <b>have a non-Reynolds DMS?</b></p> <p>17 A. The competition has varying levels in the same</p> <p>18 kind of capacity. Product development is, in our</p> <p>19 world, a rat race. What you do is you have an idea and</p> <p>20 you work hard and you build it, and for a while you</p> <p>21 have exclusivity, and that helps sell complete systems.</p> <p>22 And then the competitors see what you are doing and</p> <p>23 they copy it. And then that cycle just continuously</p> <p>24 goes on. And it's been that way the whole time that I</p> <p>25 have been in the business.</p>

25

1 **Q. So in terms of this product, what would you**  
 2 **have your sales force educate the dealer about to**  
 3 **convince them to go with a Reynolds rather than some**  
 4 **other DMS?**

5 A. The DocuPad system is our sharpest, most  
 6 powerful, most salable, best recognized product. That  
 7 would be the one that they would certainly start with.

8 **Q. In terms of going into a large dealership and**  
 9 **distinguishing Reynolds' product as uniquely positioned**  
 10 **to serve a large dealership, what would you teach the**  
 11 **owner of the dealership?**

12 A. There's an interesting phenomena that has to do  
 13 with the sale of after-sale products. The typical  
 14 cycle of a sale of a vehicle goes like this: The  
 15 prospect comes in and they kind of generally know what  
 16 they want. They are looking for cars or a pickup  
 17 truck. The salesperson talks with them and tries to  
 18 get them to settle on something that they can afford  
 19 that's what they want. So the negotiation takes place  
 20 and a, quote, deal is agreed upon.

21 Then they have -- the buyer is taken typically  
 22 to a reception lounge and has to wait probably  
 23 45 minutes to an hour to get to go to finish up the  
 24 paperwork. Well, that's what the customer thinks. But  
 25 what's really going on is this is now the second

26

1 attempt to sell a whole bunch more stuff. This is  
 2 where the extended warranties are sold. This is where  
 3 what they call rust and dust, it's the paint protection  
 4 package. It's where they sell you specialty insurance  
 5 for your tires and wheels. So if you live in a town  
 6 that's got lots of potholes and you have got  
 7 low-profile tires and aluminum wheels, you are going to  
 8 have a problem at some point.

9 And all this is done in the monthly payment,  
 10 which is critical to the buyer. It is recalculated  
 11 every time something is put on or taken off. People  
 12 don't like that, that process. I remember when my son  
 13 went out to buy his first car, I said this is what's  
 14 going to happen. When you go in that room to finish  
 15 the paperwork, do your arms like that, and it's no to  
 16 everything.

17 **Q. So how does this factor in to your ability to**  
 18 **get large dealerships to go with Reynolds?**

19 A. There's one more little tidbit. In DocuPad, we  
 20 don't do the strong arm. They have their side of the  
 21 DocuPad, and we present to them lots of times with  
 22 visual sales aids, sometimes videos, they have their  
 23 own stylus and they say, okay, I would like to have  
 24 that one. And it recalculates what the payment is  
 25 going to be. And well, that one is a little too much,

27

1 so I'll take that one off. Let's do this one, and it  
 2 recalculates the payment.

3 The miracle is people, by themselves, will buy  
 4 more than happens when they are dealt with pushy  
 5 salesmen.

6 **Q. Is this a feature that you have found is easier**  
 7 **to explain to a large dealership?**

8 A. Yeah.

9 **Q. Why is that?**

10 A. It enables the whole transaction to take place  
 11 rather quickly. And people, many, many customers, they  
 12 just want to get done with the process and get on with  
 13 life. So they make their decisions like that. But the  
 14 end is, on average, a dealership that's using DocuPad  
 15 will generate \$200 more profit than doing it the  
 16 traditional way.

17 **Q. Does CDK have something comparable to DocuPad?**

18 A. They have a system that's called -- it has a  
 19 name, but I'm sorry, I can't recall exactly what it is,  
 20 where they have a menu of things that you can buy. It  
 21 works on a slate, and you can check off the things you  
 22 want and things you don't want. But it's not  
 23 integrated into the finance system so you don't get the  
 24 payment refresh.

25 And there is nothing out there that compares to

28

1 the DocuPad and the ability to do payment refresh so  
 2 that as people make their choices, they see what  
 3 happens to their payment and they can put things on,  
 4 take things off. We are the only ones that do that.

5 **Q. So I have seen mention in some of the documents**  
 6 **there's other DMS companies like Dealertrack and**  
 7 **Auto/Mate, would they have something comparable to**  
 8 **DocuPad?**

9 A. No. We have invested I don't know how much,  
 10 but it's in the millions in the software to make all  
 11 this work.

12 **Q. And your investment in software, is it fair to**  
 13 **say it's been geared toward larger dealerships?**

14 A. Yeah. Smaller dealerships operate at a much  
 15 slower pace. For example, we just finished installing  
 16 this at the Penske Group which has 150 dealerships.  
 17 And the Penske Group, what they were spending per month  
 18 on FedEx to get transaction documents in from a  
 19 dealership into their central accounting office would  
 20 be enough to make a strong man weep.

21 So if you use DocuPad, everything is  
 22 electronic. So it's electronic, like instantly. So as  
 23 soon as the transaction is finished, you hit the finish  
 24 button, the whole thing, all the forms, all the  
 25 signatures, everything goes to the central accounting



<p style="text-align: right;">29</p> <p>1 office without having to use FedEx, which is a 2 significant savings. 3 Also from a manpower standpoint, since we have 4 so many computer checks for DocuPad to ensure that the 5 transaction is done properly, when you don't have 6 kickbacks from the finance sources, life becomes 7 tremendously simpler. The whole organization can close 8 their books a couple of days earlier than what they are 9 used to closing them because they are not having to 10 wait for packages of deals to come in. You don't get 11 them -- in the old manual way you don't get them until 12 probably a week after month close. With DocuPad, you 13 have them right to the close and you don't have to ship 14 anything around. All the consolidation is -- it's all 15 automatic. 16 The updates to the accounting system are all 17 done hands-off. And to a big dealer, that's very 18 important. As a matter of fact, we have prospects that 19 buy DocuPad more for that than they do for the fact 20 that they can sell more and then generate more profit 21 per deal. Their big bugaboo is the working capital 22 that it takes to fund a transaction until you finally 23 get funded by the finance source. 24 <b>Q. And that's available to any dealership? Not</b> 25 <b>just Penske?</b></p>	<p style="text-align: right;">31</p> <p>1 customers and they build customer files on the fly. 2 And they like to think that their direct mail pieces 3 will be more effective than what the dealer does, which 4 in some cases it is because they have dealers out there 5 that don't do anything as far as customer follow-up is 6 concerned. They are archaic. 7 <b>Q. Does the --</b> 8 A. The OEM specifies what we have to do, and they 9 have a great cloud over our heads, because if we don't 10 do exactly what they want us to do as far as taking 11 data out of the DMS and shipping to it the OEM, they'll 12 disqualify us. And our ability to be qualified a 13 supplier of factory communications for their OEM is 14 lifeblood for us. For instance, if General Motors 15 decides they want to have a whole bunch more stuff as 16 far as lots of data and data fields sent to them on 17 each car deal, we say, yes, sir, yes, sir, because we 18 dare not. 19 <b>Q. Do they pay you for this?</b> 20 A. No. They actually make the dealer pay. The 21 dealer pays us for factory communications which is -- 22 the size of that bunch of software varies by OEM. 23 General Motors is probably the most demanding right 24 now. Ford has occupied that title for a while. But 25 again, the OEMs are kind of at a constant race, among</p>
<p style="text-align: right;">30</p> <p>1 A. Any Reynolds. 2 <b>Q. I want to shift gears a little bit before we</b> 3 <b>take our first break and talk a little bit about</b> 4 <b>Reynolds' relationship with the car manufacturers,</b> 5 <b>which I'll refer to as the OEMs, if that's comfortable</b> 6 <b>with you.</b> 7 A. Yeah. 8 <b>Q. Can you explain how the Reynolds DMS interacts</b> 9 <b>with OEMs?</b> 10 A. Yeah. Probably the simplest way to say is yes, 11 it does. 12 <b>Q. What kinds of -- I assume it's data being</b> 13 <b>transmitted in some form. Can you explain what data is</b> 14 <b>going on and what direction it's going and what kind of</b> 15 <b>data it is.</b> 16 A. It varies by OEM, but common to all of them is 17 they want to know if the sale of a vehicle took place 18 and they want to know what the vehicle identification 19 number is of that vehicle because that helps them in 20 their production planning. 21 There is this ongoing disagreement between 22 dealers and OEMs as to who owns the customer. Dealers 23 like to think very much that they own the customer. 24 However, the OEMs, through the software that we 25 provide, you get all the information about all the</p>	<p style="text-align: right;">32</p> <p>1 other things, to be closer to what's going on in the 2 field. 3 <b>Q. So just so the record is clear on this, I'll</b> 4 <b>tell you my understanding. You correct me if I'm</b> 5 <b>wrong. But if I go in to a General Motors dealership</b> 6 <b>and I buy a General Motors car, General Motors expects</b> 7 <b>you to take the data that I have been inputted into the</b> 8 <b>dealer's DMS, my name, the VIN number of the car I</b> 9 <b>bought, maybe other details, and they -- General Motors</b> 10 <b>expects Reynolds to take that data that is in the DMS</b> 11 <b>that the dealer has entered and ship that information</b> 12 <b>to General Motors; is that correct?</b> 13 A. You got it exactly correct. Now, there's a few 14 more touches. The dealer has actually authorized 15 General Motors to do that, okay. Why would they do 16 that? Well, every few years, there's changes to the 17 dealership agreement with the factory. And this is not 18 a negotiated situation. It is a "you will." So if a 19 dealer should dissent and say, for instance, forbid us 20 to do what we do, he would start to suffer in many 21 ways. He wouldn't get the fast-moving cars. His 22 payments coming back from the captive finance company 23 may not be as prompt as they used to be. It is -- you 24 might face warranty claim audits more often than the 25 typical dealership, which are painful and expensive.</p>

33

1 **Q. Am I correct in my understanding that at some**  
 2 **point after UCS bought Reynolds that there was a breach**  
 3 **of contract suit that went on between Reynolds and**  
 4 **General Motors?**

5 A. I think there was something, but frankly, I  
 6 don't remember exactly the details of what that was all  
 7 about.

8 **Q. You mentioned in a prior answer that one of the**  
 9 **things you are very concerned about is the prospect of**  
 10 **having an OEM decertify Reynolds as a DMS. What did**  
 11 **you mean by decertify in that answer?**

12 A. Decertify, again, they publish very detailed  
 13 specifications as to how our dealer-to-factory  
 14 communications has to work, what data has to be  
 15 provided, in what format. And they change that stuff  
 16 maybe not quite yearly, but certainly every two years  
 17 there are changes. And we have to reprogram to meet  
 18 the new specifications, and if we should fail to do  
 19 that, we would not be a certified provider of  
 20 dealer-to-factory communications for that OEM, which  
 21 would have disastrous effects from a business  
 22 standpoint.

23 **Q. You say disastrous effects from a business**  
 24 **standpoint, you mean from a Reynolds business**  
 25 **standpoint?**

34

1 A. Yes.

2 **Q. And would the fear there be that if you had a**  
 3 **GM -- if you were decertified by GM, all of your GM**  
 4 **dealers who use your Reynolds DMS would have to shift**  
 5 **to a different DMS?**

6 A. Correct.

7 **Q. Has Reynolds been decertified?**

8 A. No. But they also, when they give us specs and  
 9 they give us the order about what has to be done, they  
 10 never give us enough time to build it in an orderly  
 11 fashion and fully test it. There's always an extreme  
 12 pressure scramble. Some manufacturers are better about  
 13 that. Some are worse. GM is one of the worst. And  
 14 Mercedes is probably one of the better. Toyota is  
 15 really good as far as giving us a good spec.

16 We have lots of situations with General Motors  
 17 where the spec is -- has conflicting instructions as  
 18 what's to be done, and we have to go back to General  
 19 Motors and say, hey, your spec has got a problem; let  
 20 me point that out to you. We teach them what they did  
 21 wrong and then they change the spec. And then we are  
 22 able to finish the programming and actually get it in  
 23 the field.

24 **Q. How many OEMs have certified Reynolds?**

25 A. All of them.

35

1 **Q. Is that also the case with some of the smaller**  
 2 **DMS companies?**

3 A. The smaller DMS companies, considering the  
 4 amount of grief that we go through to stay certified, I  
 5 don't know how the small guys do it. I think what they  
 6 must do is they must focus on one OEM or maybe two.  
 7 Whereas, we have folks on all of them.

8 **Q. You mentioned in a prior answer that General**  
 9 **Motors makes the dealer pay for the data transfer that**  
 10 **Reynolds does to General Motors. How is that payment**  
 11 **made?**

12 A. Part of our standard monthly bill.

13 **Q. So the bill that General Motors sends to the**  
 14 **dealer has a line item for this?**

15 A. No. It is -- the situation is more like this.  
 16 They say, Mr. Dealer, you need to sign up with Reynolds  
 17 and Reynolds for the General Motors OEM communications  
 18 package. This goes in effect December 1st. And in  
 19 most cases they actually even mandate what that charge  
 20 will be. Sometimes it's a monthly charge. Sometimes  
 21 there's a one-time and then a monthly charge.

22 But it then looks as though we sold them  
 23 factory communications. Well, it's nothing of the  
 24 sort. What they did was we get that business because  
 25 we are certified. And because our factory

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1 communications is very tightly integrated into the DMS,  
 2 and trying to use the standalone factory  
 3 communications, the amount of key entries it would take  
 4 to get the data together and get it shipped to General  
 5 Motors would be unthinkable.

6 **Q. I'm not sure I follow exactly how the payments**  
 7 **were made. You said it's either a monthly or a**  
 8 **one-time fee. How is this payment made?**

9 A. It's a product amongst all the rest of our  
 10 products, and we invoice for it and collect it. And  
 11 that's our pay for putting up with what General Motors  
 12 wants.

13 **Q. Does it appear as a separate line item?**

14 A. Yeah. It will say GM Factory Communication.  
 15 Or if they have multiple OEMs at the dealership, a  
 16 similar process will take place with each OEM, and  
 17 we'll bill it. It will be a standard line item for us  
 18 to bill.

19 **Q. I have seen on the documents reference to RCI,**  
 20 **Reynolds Certified Interface, I believe it stands for.**  
 21 **Are the OEMs part of RCI or are they part of some other**  
 22 **type of certification within Reynolds?**

23 A. The OEMs, we consider them part of RCI. From a  
 24 programming standpoint they are. The same team handles  
 25 that. And that is the way that it gets into our

<p style="text-align: right;">37</p> <p>1 invoicing system.</p> <p>2 <b>Q. You said in that answer, you emphasized the</b></p> <p>3 <b>word "we" when you said that we consider it that way.</b></p> <p>4 <b>Is there to some degree some different thinking on</b></p> <p>5 <b>whether the OEMs are RCI certified?</b></p> <p>6 A. Well, the "we" includes me and everybody else.</p> <p>7 My position is I was the only programmer for the first</p> <p>8 five years, but I have not written a line of code since</p> <p>9 1992. That's when we bought Ford Computer Services</p> <p>10 from Ford Motor Company. However, I hang out with the</p> <p>11 programmers a lot. I know them all -- not all of them</p> <p>12 because there's hundreds of them. But the key ones I</p> <p>13 know very well and have worked with them for a long</p> <p>14 time.</p> <p>15 And in product development, what my position</p> <p>16 is, there's an idea to build something and there's</p> <p>17 probably several other ideas to build something. You</p> <p>18 know, there's many competing wishes for this or that or</p> <p>19 whatever, and I'm the guy that decides what we will and</p> <p>20 what we won't from a product development standpoint.</p> <p>21 So that's my relationship to the programming</p> <p>22 department. I'm the keeper of the budget.</p> <p>23 <b>Q. And you said the same team works on the OEMs.</b></p> <p>24 <b>You mean the same group of software programmers that do</b></p> <p>25 <b>all other RCI interfaces also are the same people that</b></p>	<p style="text-align: right;">39</p> <p>1 which were -- when it comes to software development,</p> <p>2 were quite insane.</p> <p>3 What they did was Ford Motor Company has a</p> <p>4 policy called cross-functional assignment where they</p> <p>5 take managers and they move them out of their skill set</p> <p>6 and they put them in other departments just for them to</p> <p>7 learn how the rest of the business works. And so the</p> <p>8 programming department that was fairly large was led</p> <p>9 by -- the supervisors throughout that department to a</p> <p>10 man, we are not programmers. They had never written a</p> <p>11 line of code and they were put in to supervise a</p> <p>12 programming team of 6, 8, 10, 15 people without a clue</p> <p>13 how to evaluate what they were doing. And therefore,</p> <p>14 Ford Dealer Computer Services' DMS product did not</p> <p>15 prosper.</p> <p>16 The dealers kept bitching, so -- to a gentleman</p> <p>17 by the name of Bob Rewey, who was vice president of</p> <p>18 sales for Ford Motor Company worldwide. And he got</p> <p>19 tired of it and he said, I want to sell the goddamn</p> <p>20 thing. They put it up for bid, and we won the bid and</p> <p>21 quadrupled revenues overnight, tripled personnel</p> <p>22 overnight and became kind of the dominant supplier of</p> <p>23 DMSes for Ford dealers.</p> <p>24 <b>Q. Was this UCS that purchased this?</b></p> <p>25 A. Yes.</p>
<p style="text-align: right;">38</p> <p>1 <b>work with the OEMs?</b></p> <p>2 A. That's a little more complicated to answer</p> <p>3 because factory communications started 30 years ago.</p> <p>4 And so the factory communications team was part of the</p> <p>5 main programming group, which in those days, of course,</p> <p>6 was much smaller. And I can remember the factory</p> <p>7 communications team is maybe like two or three</p> <p>8 programmers. They got done what needed to be done.</p> <p>9 As time has gone on, it looks like those</p> <p>10 programmers don't belong in the main programming group.</p> <p>11 They belong off in the group that handles RCI requests</p> <p>12 when it comes to OEMs.</p> <p>13 <b>Q. You mentioned in a prior answer, I didn't quite</b></p> <p>14 <b>catch it, but you gave a date and you said that's when</b></p> <p>15 <b>we acquired, and I thought you said something about</b></p> <p>16 <b>Ford. You acquired something from Ford? I didn't</b></p> <p>17 <b>follow that.</b></p> <p>18 A. Ford Motor Company -- and they started this</p> <p>19 probably in the late '60s. They were dissatisfied --</p> <p>20 Ford was dissatisfied or Ford dealers in general were</p> <p>21 dissatisfied as to what was available to them from a</p> <p>22 DMS perspective. So Ford built their own DMS software</p> <p>23 in a department, a fairly large department inside Ford</p> <p>24 Motor Company. But they didn't do a very good job at</p> <p>25 it mainly due to some personnel practices that Ford had</p>	<p style="text-align: right;">40</p> <p>1 <b>Q. This was prior to the time you merged are</b></p> <p>2 <b>Reynolds?</b></p> <p>3 A. Yes. Reynolds merger was 2006. This one was</p> <p>4 1972.</p> <p>5 (A recess was taken.)</p> <p>6 BY MR. ABRAHAMSEN:</p> <p>7 <b>Q. We'll go back on the record.</b></p> <p>8 A. Can I clarify a date?</p> <p>9 <b>Q. Yes, by all means, Mr. Brockman.</b></p> <p>10 A. The Ford Dealer Computer Services acquisition</p> <p>11 was 1972.</p> <p>12 <b>Q. 1972?</b></p> <p>13 A. Yeah, 1972.</p> <p>14 <b>Q. So that would have been just a couple years</b></p> <p>15 <b>after you formed UCS?</b></p> <p>16 A. Wait a second. Excuse me. It was 1992.</p> <p>17 <b>Q. Okay. So about a goodly amount, over 20 years</b></p> <p>18 <b>after you formed UCS and several years before you</b></p> <p>19 <b>bought Reynolds?</b></p> <p>20 A. Um-hum.</p> <p>21 <b>Q. Thank you very much for clarifying the record.</b></p> <p>22 <b>Let me show you an exhibit we've marked as CX 4468 and</b></p> <p>23 <b>ask you to take a look at it. CX 4468 has Bates number</b></p> <p>24 <b>REYCID0568116. It appears to be an e-mail with an</b></p> <p>25 <b>attachment from the National Automobile Dealers</b></p>

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**Association. And my first question for you, Mr. Brockman, is whose handwriting is on the first page of the exhibit?**

A. That's mine.

**Q. And what was the occasion for you to take these handwritten notes?**

A. I was planning to -- I personally felt like I needed to attend an NADA/Reynolds data meeting.

**Q. What was the purpose of the Reynolds data meeting?**

A. Well, Peter Welch, of course, is the president of NADA, or was at that time, and I was very interested and concerned that what we might do as far as data security going forward to comply with what NADA's recommendations were.

**Q. What were your concerns?**

A. Well, at this point in time, I was not really fully informed as what the federal laws were as far as data security is concerned, and this particular meeting was really quite valuable in teaching me more about what was going on as far as data security is concerned. There was a gentleman, and I'm sorry I don't recall his name, but he was an attorney with NADA who specialized in knowing such things, and it was very, very useful to listen to what he had to say.

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**Q. Let me ask you to turn to the page that has CX 4468-007. I'll let you take a look at that page, but let me -- I'm going ask questions about security protocols when it comes to DMSes with regard to third parties and whether or not the dealer can give a user name and a password out to a third party and how this document addresses that issue.**

**So I was going to ask you to look at the text at the top of this page, and I'm just going to ask you to give me your interpretation of footnote 19. I'll give you a chance to catch up.**

A. The print is small, but I have read it.

**Q. Is this document from NADA taking the position that the dealers can be permitted to give their vendors password access to their DMS?**

A. I don't think so.

**Q. How do you interpret the document?**

A. I interpret the document as certain safeguards had to be followed when it comes to dealership data because dealerships were considered to be financial institutions, and therefore, to continue to qualify as financial institutions, there's certain things you have to do having to do with who gets access to what. A third party has to be covered by contract. A dealer has to have a contract with the third party before they

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can have any data that they hold turned over to them. All told, my perception of this document is things needed to be tightened up even further than what they were before.

**Q. Tightened up further in the sense that -- in what sense?**

A. Well, as to who has access. The whole evolution of security with DMS systems has kind of been a long and twisted trail. Reynolds, when I arrived, as far as passwords are concerned, they had evolved somewhat. Back in the beginning, a single password would get into thousands of Reynolds computers, and they had connected down to where it was a password by region and a password by state and then ultimately an individualized password because that was viewed to be kind of the first line of defense.

Dealers don't understand passwords and security. They don't particularly want to. Certainly the managers inside the dealerships are paid off gross profit, and they are interested in increasing gross profit and very little else.

**Q. I take it the evolution of this security development included a period where dealers were giving out passwords to app vendors; is that correct?**

A. Yes. It was widespread.

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**Q. And is that contrary to your belief as to how data should transfer out of a DMS into a third party's hands?**

A. It absolutely is at variance with the way I understand that it has to be done.

**Q. And your preferred approach would be for the DMS and the DMS only to transfer data out of the dealer's DMS; is that correct?**

A. That would be my preference in that handling of data has substantial liabilities attached to it. Based upon my experience so far, whenever there's some kind of data breach, whether or not we are responsible or not, we are the first ones that get called.

**Q. Well, when you say a liability in that answer, you are talking about potential liability for Reynolds and Reynolds?**

A. Yes.

**Q. And the liability would arise -- correct me if I'm wrong, but your fear is that if a dealer authorized some third party to get data from the dealer's DMS, if that data got into the wrong hands, you have a fear that even though it was the dealer that permissioned that, you would be the deep pocket and you would ultimately face possible liability?**

A. That's correct. At the very, very minimum, we



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1 would be on the hot seat. And we know that because we  
2 have been through one significant experience. There  
3 was a dealership called Franklin Chevrolet, and they  
4 had a general manager that had password access, quite  
5 properly, to everything inside the dealership's  
6 computer. And I think probably unknown to the dealer,  
7 because the dealer was clueless as far as security is  
8 concerned, this general manager copied the entire  
9 customer file to a laptop, his own laptop. And he  
10 ultimately left that company, and I don't know what the  
11 circumstances were of that, but sometime after that,  
12 the entire customer file for that dealership was posted  
13 to the internet.

14 And a complaint was made to the FTC, quite  
15 properly so. The FTC went to the dealership and said,  
16 look, this is your customer data that's been posted on  
17 the internet; what's going on? And the dealer said, I  
18 don't know; that's computer stuff; go talk to my  
19 computer provider.

20 And so we started meeting with the Federal  
21 Trade Commission, and that's where we met Michael. It  
22 took quite a bit of discussion to get it clarified that  
23 this was not a computer error or software error. It  
24 was a personnel problem. And when we finally got that  
25 straight, that was about \$400,000 later in legal fees.

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1 So we got kind of a rude lesson as to what the  
2 potential involvement we would have because I mean,  
3 just to explain, look, guys, we didn't do this, your  
4 guy did it.

5 **Q. Let me ask you to -- I'm just going to follow**  
6 **up on something you said about CX 4468. I believe you**  
7 **said that you took from this publication the sense that**  
8 **Reynolds had to do more in terms of its security. What**  
9 **was it about the document that suggested to you that**  
10 **Reynolds needed to do more about security?**

11 A. Well, it became pretty clear that allowing a  
12 third party to have access rights to our software, to  
13 pull off information and resell it to somebody else,  
14 that there was ample potential for us to get wrapped up  
15 in that whole thing.

16 **Q. Did you have a sense that in an ideal world if**  
17 **you were able to have complete say over the -- what**  
18 **NADA's position was on security, that you would seek to**  
19 **have NADA come out with a stronger security statement**  
20 **than this where instead of just saying that they had to**  
21 **audit password access, that NADA might say that dealers**  
22 **shouldn't grant people outside of their dealership**  
23 **password access?**

24 A. I don't know that we thought about doing that.  
25 Generally our attitude towards really any kind of

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1 requirements as far as our software is concerned is we  
2 seek a written document that we can peruse at length  
3 and understand it in depth. To go for conversation is  
4 not our preferred way. As programmers, you know, we  
5 want a spec in writing.

6 **Q. And in fact, your contracts with your dealers**  
7 **say that they can't give out their password to anyone**  
8 **outside the company; is that correct?**

9 A. Correct. And that has been the case -- it  
10 certainly was that way at UCS. At Reynolds it was that  
11 way long before I came. And it, in my opinion, is kind  
12 of the first step in having a sensible and coherent  
13 data protection strategy. And that's one of the things  
14 we do with RCI is we know exactly which data fields,  
15 which records the third party gets, and we know when  
16 they get them. They can't get any more than that  
17 without going through some process with us and also  
18 with their customer that additional data fields are  
19 appropriate or not.

20 **Q. Let me ask you to take a look at another**  
21 **exhibit, CX 2250. CX 2250 has Bates CDK\_CID\_03047915.**  
22 **I'll ask the witness to take a look at it. This is an**  
23 **e-mail from Mr. Brockman to Mr. Workman and others with**  
24 **an attachment.**

25 **My understanding of this document is that you**

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1 **had had some sort of meeting with some people from what**  
2 **was then ADP at an NADA meeting, and then folks from**  
3 **what was then ADP sent you some materials. And this**  
4 **e-mail and the attachment is your response to CDK about**  
5 **the materials that they sent you. Is my understanding**  
6 **correct?**

7 A. Yes.

8 **Q. I wanted to ask about something that's said on**  
9 **the last page of the exhibit, which is CX 2250-003.**  
10 **And it's under the heading of Data Services. My**  
11 **understanding is that the materials that have been sent**  
12 **to you from ADP had envisioned a joint venture between**  
13 **ADP and Reynolds. And my question is in the third**  
14 **paragraph down under Data Services, it says, "Reynolds**  
15 **would contribute to this Newco entity its technology**  
16 **for accessing ERA and POWER systems plus all of its**  
17 **current contracts for providing these services to third**  
18 **parties."**

19 **What exactly was it that Reynolds would be**  
20 **contributing to this Newco under this proposed joint**  
21 **venture?**

22 A. Frankly, the answer to that is I'm not sure.  
23 Their first submission to us was not requested and just  
24 kind of came in across the threshold. And I sat down  
25 and tried to future think subject to what they were



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1 talking about, some of which I was definitely more  
2 interested in than others, because as you may or may  
3 not be aware, there's a joint venture between us and  
4 ADP. What I'm quite sure you are not aware of is it  
5 hasn't been very successful.

6 Its original goal was to -- there's a process  
7 that Dealertrack has developed, and it's a good one.  
8 And they basically own that market. They have  
9 effectively a complete monopoly. How it works is that  
10 in the process of the sale of a vehicle, they are  
11 shopping for finance. And that's one of the things  
12 that the finance manager in the dealership does is he  
13 shops for the best deal not only for the consumer, but  
14 also for the dealership, because the dealership gets a  
15 profit margin off of selling financing.

16 The neat thing that Dealertrack has is that  
17 they have a shopping screen where they have pipes to --  
18 and by pipes I mean communication capabilities with  
19 over a thousand finance sources. Some big. Some  
20 small. But I mean, they have by far and away the most.  
21 And what you can do is you can have a transaction on  
22 your screen and you can hit the button and go shopping  
23 at two, three, four, five, ten different finance  
24 sources, which means it goes in electronically to those  
25 potential lenders. And the potential lenders, they

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1 each have software where they can, you know, render an  
2 up or a no decision in seconds.

3 **Q. Is this the joint venture between CDK that you**  
4 **said wasn't successful that did a comparable service?**

5 A. Attempted to.

6 **Q. And this joint venture that's envisioned in**  
7 **CX 2250, was the notion that Reynolds would contribute,**  
8 **let's say, RCI to this Newco or am I off target there?**

9 A. I don't think -- I don't think it says that.  
10 But one of the things that we were interested in was to  
11 try and make the existing joint venture successful.  
12 Amazingly, what's happened with that joint venture is  
13 the ability to have pipes to many credit sources. We  
14 were unable to get finance sources interested in  
15 talking to us because they said, look, what we've got  
16 is working just fine; thank you; have a nice day.

17 **Q. The joint venture envisioned by the documents**  
18 **that you are responding to in CX 2250 would have been**  
19 **all data. Not just finance data; is that correct?**

20 A. I don't know that it says all data. But again,  
21 it's worthwhile pointing out that as a result of this  
22 exchange, nothing was ever done.

23 **Q. Why not?**

24 A. Frankly, because I was very much irritated with  
25 ADP. I have had a long-standing hatred for ADP that

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1 goes back to the first year I was in business. But  
2 that's another story.

3 **Q. Let me ask you a question. And counsel will**  
4 **appreciate the narrowness of the question and may**  
5 **instruct you to just answer yes or no to the question.**  
6 **Was this joint venture something that was discussed**  
7 **with counsel?**

8 A. I don't think so.

9 **Q. Was the idea of the joint venture the subject**  
10 **of any further discussion between you and people at ADP**  
11 **after this e-mail?**

12 A. No.

13 **Q. Did you communicate to ADP after you sent this**  
14 **e-mail that you were no longer interested in pursuing a**  
15 **joint venture?**

16 A. I don't recall. I'm sorry.

17 **Q. Let me ask you to take a look at an exhibit**  
18 **we've marked as CX 4043. CX 4043 has Bates**  
19 **REYCID0719798. My understanding is that these are**  
20 **notes from the 2012 time period. And my first question**  
21 **is on the very first set of slash marks on the top of**  
22 **the exhibit, first page of the exhibit under**  
23 **Background, the sentence reads, "Secondary issue is**  
24 **data security of business information -- True Car."**  
25 **What's the reference to True Car in this sense?**

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1 A. True Car is a service that's provided basically  
2 at no charge to consumers where they can electronically  
3 shop multiple dealerships for price information. And  
4 True Car derives their revenue from dealerships that  
5 want to be part of the True Car family and thereby  
6 picking up additional sales. Whether or not True Car  
7 ultimately thrives or not remains to be seen, but it  
8 certainly is developing competitors, one called  
9 Carvana, you see ads on TV about where they have this  
10 huge building that has a big central elevator, and you  
11 can dial in which vehicle you want and press the  
12 button, and it will go find it and pull it into the  
13 center, bring it down. And you can open the door and  
14 drive it out.

15 **Q. What is the reference in the sentence to the**  
16 **data security issue with True Car?**

17 A. I don't think that's directly related to the  
18 line above. We are talking about an unattended remote  
19 access to Reynolds systems is going to stop. And the  
20 issue there is data security of personal information.

21 Secondly, we are talking about business  
22 information, which is pricing, competitive pricing.  
23 Dealers are very sensitive about what their typical or  
24 starting price would be for a specific vehicle, and  
25 they worry about that getting out.

<p style="text-align: right;">53</p> <p>1 Then the next paragraph is all about RCI</p> <p>2 interfaces.</p> <p>3 <b>Q. Right. And the last slash, correct me if I'm</b></p> <p>4 <b>wrong, but the one that begins, "Data broker situation</b></p> <p>5 <b>is intolerable?"</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. And then it goes on. Is this the point we were</b></p> <p>8 <b>talking about earlier where you are concerned that if</b></p> <p>9 <b>the information goes into the wrong hands, that there</b></p> <p>10 <b>may be liability on the part of Reynolds as the deep</b></p> <p>11 <b>pockets?</b></p> <p>12 A. Yes. And I think about this time period I was</p> <p>13 becoming aware that as far as the hackers that were</p> <p>14 invading our systems was predominantly two companies,</p> <p>15 both owned by ADP, IntegraLink and DMI. And their</p> <p>16 entire business was all around invading systems and</p> <p>17 sucking out data and then reselling data. They have</p> <p>18 been at it for a long time, but I did not understand</p> <p>19 that they were -- they did more hacking than everybody</p> <p>20 else combined.</p> <p>21 <b>Q. As you sit here today, what is your sense of</b></p> <p>22 <b>all the third-party integration that was going on? You</b></p> <p>23 <b>call it hacking. I'll use whatever phrase you are</b></p> <p>24 <b>comfortable with. As you sit here today, of all the</b></p> <p>25 <b>instances of that that was happening to Reynolds in</b></p>	<p style="text-align: right;">55</p> <p>1 <b>for indemnification if data was shared?</b></p> <p>2 A. Well, the point where it's most sensitive is</p> <p>3 personal information. If it's personal information</p> <p>4 involved, that's the one where it's the most expensive</p> <p>5 to sort out, and therefore, it's the part that I'm most</p> <p>6 concerned from a security and from an indemnification</p> <p>7 standpoint.</p> <p>8 The other type of data and the classic one is</p> <p>9 vehicle inventories. Vehicle inventory data is</p> <p>10 basically units that a dealership owns that they want</p> <p>11 to post for sale on an internet service. Hard to see</p> <p>12 where damages comes out or anything like that because</p> <p>13 there's nothing secret about it. You can go on</p> <p>14 dealership websites and see it all with no constraints</p> <p>15 on access. So therefore, indemnification for that type</p> <p>16 of data is much less relevant.</p> <p>17 <b>Q. The last entry on this exhibit which is on the</b></p> <p>18 <b>backside of the exhibit under Use of Agents talks about</b></p> <p>19 <b>the use of a third party acting under contract as an</b></p> <p>20 <b>agent of ADP or Reynolds. And the sentence says that</b></p> <p>21 <b>it's not an issue as the specific RCI agreement is</b></p> <p>22 <b>directly between us.</b></p> <p>23 <b>What was the point you were making here about</b></p> <p>24 <b>the exception for third-party agents?</b></p> <p>25 A. As I recall, this applies to OEMs. And OEMs,</p>
<p style="text-align: right;">54</p> <p>1 <b>this 2012/2013 time period, what percent was accounted</b></p> <p>2 <b>for by the combination of IntegraLink and DMI?</b></p> <p>3 A. I don't know a percentage, but I know that far</p> <p>4 and away they were the major, which would have been</p> <p>5 over 50 percent, probably in, I guess, the 75 percent</p> <p>6 range.</p> <p>7 <b>Q. Who would have been -- could I use the term</b></p> <p>8 <b>hostile integrator? What phrase are you most</b></p> <p>9 <b>comfortable with?</b></p> <p>10 A. We'll use hacker.</p> <p>11 <b>Q. What company would be the next most prevalent</b></p> <p>12 <b>after the combination of DMI and IntegraLink?</b></p> <p>13 A. There was a company called SIS who was pretty</p> <p>14 brazen about it. That's the one that we had a lawsuit</p> <p>15 with in federal court in Ohio and won.</p> <p>16 <b>Q. I'm going to come back to SIS so I don't lose</b></p> <p>17 <b>my place in my outline, if that's all right with you.</b></p> <p>18 A. Sure.</p> <p>19 <b>Q. I want to ask about one more bullet on CX 4043.</b></p> <p>20 <b>Two more. It's the second-to-last one on the page</b></p> <p>21 <b>that's talking about indemnification, and it's making a</b></p> <p>22 <b>distinction, I believe, between the level of</b></p> <p>23 <b>indemnification that would be needed for certain types</b></p> <p>24 <b>of information. This particular bullet talks about</b></p> <p>25 <b>batch-type data. What was your position on the need</b></p>	<p style="text-align: right;">56</p> <p>1 frankly, don't have the manpower, skill or knowledge</p> <p>2 that's necessary to interact with DMS systems. And so</p> <p>3 therefore, if an OEM had a contract, say, with ADP to</p> <p>4 collect data from their dealers, that presented a</p> <p>5 different kind of situation than a hacker kind of</p> <p>6 situation. And it's where the OEM would anoint ADP as</p> <p>7 their agent, and so therefore, we get direct hooks into</p> <p>8 the OEM if anything goes wrong because we recognize ADP</p> <p>9 as a valid collector of information for that OEM.</p> <p>10 <b>Q. How is that different than the situation which</b></p> <p>11 <b>you would refer to as hacking?</b></p> <p>12 A. Well, the situation is such that the OEM says</p> <p>13 to us, look, we want to have such and such and such</p> <p>14 kind of data; and our agent in the collection of this</p> <p>15 data is ADP; and we would like for you to permit ADP to</p> <p>16 do this data collection that we want, and you get to do</p> <p>17 business directly with us, the OEM, from a contractual</p> <p>18 basis. And because CDK is an agent, they are basically</p> <p>19 transparent in the whole situation because the OEM</p> <p>20 signs up for the liabilities and for the</p> <p>21 indemnifications whenever -- which would include any</p> <p>22 acts by their agent.</p> <p>23 <b>Q. Why wouldn't the same arrangement be</b></p> <p>24 <b>permissible for a dealer to sign up to have CDK act as</b></p> <p>25 <b>their agent to collect data?</b></p>

<p style="text-align: right;">57</p> <p>1 A. Which means that we are basically permitting</p> <p>2 CDK an unfettered access into our stuff, in our system.</p> <p>3 <b>Q. Well, the dealer would be the one giving the</b></p> <p>4 <b>permission?</b></p> <p>5 A. See, the dealer is unable to give that</p> <p>6 permission because the dealer does not own the</p> <p>7 software. He has the rights to the software only under</p> <p>8 license, and the license is very specific about what's</p> <p>9 allowed and what's not allowed. And one of the terms</p> <p>10 is that it's the only people that are allowed access</p> <p>11 are dealership employees.</p> <p>12 <b>Q. I'm just trying to get the distinction straight</b></p> <p>13 <b>in my mind about the distinction between letting an OEM</b></p> <p>14 <b>use somebody like CDK as an agent versus letting the</b></p> <p>15 <b>dealership use somebody like CDK as an agent.</b></p> <p>16 A. Well, the manufacturers have an interesting</p> <p>17 disadvantage and they become the biggest pocket. Then</p> <p>18 of course, OEMs are, you know, many hundreds of times</p> <p>19 bigger than we are and have those people on the hook.</p> <p>20 If anything goes wrong, it's an okay kind of situation.</p> <p>21 <b>Q. CX 4043 were notes you prepared in order to</b></p> <p>22 <b>have a conversation with Mr. Anenen, as I understand</b></p> <p>23 <b>it; is that correct?</b></p> <p>24 A. This was the beginnings of that. I think there</p> <p>25 are subsequent documents which are more complete and</p>	<p style="text-align: right;">59</p> <p>1 A. We would flip the switch and disrupt everything</p> <p>2 they were doing.</p> <p>3 <b>Q. What did Mr. Anenen reply?</b></p> <p>4 A. It was an interesting conversation. It was</p> <p>5 about an hour conversation, and it was by phone.</p> <p>6 Fifteen minutes of it were meaningful discussion. Then</p> <p>7 45 minutes was just, you know, drivel.</p> <p>8 <b>Q. What was the discussion that you would</b></p> <p>9 <b>characterize as drivel?</b></p> <p>10 A. Totally unrelated to the subject.</p> <p>11 <b>Q. So in the 15 minutes you talked about this</b></p> <p>12 <b>subject, aside from what you characterized as a threat</b></p> <p>13 <b>that you would flip a switch and cut them off of the</b></p> <p>14 <b>system and the indemnification, what other topics were</b></p> <p>15 <b>covered in the 15 minutes of substance?</b></p> <p>16 A. I believe that it was a discussion about</p> <p>17 orderly stand down, which is an important issue really</p> <p>18 to both of us because the dealerships that are</p> <p>19 involved, our customers as well and therefore, to</p> <p>20 abruptly just pull the rug out means something that</p> <p>21 what our customers wants, which is to have their data</p> <p>22 sucked out and given to some third party, to provide</p> <p>23 them some kind of service would be distressing to them</p> <p>24 for that to occur, just bang, that the right way to do</p> <p>25 it was to have a contractual stand down. That way also</p>
<p style="text-align: right;">58</p> <p>1 closer to that whole thing getting settled.</p> <p>2 <b>Q. Yes. I'm just asking about this document. We</b></p> <p>3 <b>have others in my pile that we'll get to as well.</b></p> <p>4 A. This would have been an early one.</p> <p>5 <b>Q. And was the subject of indemnification</b></p> <p>6 <b>something you discussed with Mr. Anenen?</b></p> <p>7 A. That was one of the issues.</p> <p>8 <b>Q. What was the discussion about?</b></p> <p>9 A. Well, the discussion was that they need to get</p> <p>10 out of our software. They are hackers. And they got</p> <p>11 no right to be in our software, invading systems and</p> <p>12 using our software. And that's the principal part of</p> <p>13 what we talked about, which actually ultimately was</p> <p>14 accomplished.</p> <p>15 <b>Q. And that's the discussion that you led off</b></p> <p>16 <b>with, the unattended remote access to Reynolds' system</b></p> <p>17 <b>is going to cease?</b></p> <p>18 A. Yeah. That was kind of a combination</p> <p>19 promise/threat. It was going to happen. I had put up</p> <p>20 with it for too long.</p> <p>21 <b>Q. Was that -- would it be fair to characterize</b></p> <p>22 <b>your conversation with Mr. Anenen as being partially a</b></p> <p>23 <b>threat?</b></p> <p>24 A. Yeah.</p> <p>25 <b>Q. In what sense?</b></p>	<p style="text-align: right;">60</p> <p>1 CDK would have time to actually notify their customers</p> <p>2 that they were no longer going to be able to offer the</p> <p>3 service in the manner that they had previously, which</p> <p>4 was by hacking.</p> <p>5 <b>Q. Did their customers include OEMs?</b></p> <p>6 A. I think in some cases they did.</p> <p>7 <b>Q. So the wind down, would that have encompassed</b></p> <p>8 <b>the situation where CDK would get its -- the apps that</b></p> <p>9 <b>it was marketing certified by RCI?</b></p> <p>10 A. Yes. One of the things that was discussed, I</p> <p>11 don't know specifically, I don't have a date on this</p> <p>12 document, but over a period of time there were</p> <p>13 documents, discussions and so forth that we would enter</p> <p>14 into RCI agreements, as we would with any third party,</p> <p>15 for products that they were actually selling. Not to</p> <p>16 give them liberty to just redistribute the data but to</p> <p>17 actually use the data in creation of a product that</p> <p>18 they would build, maintain and support on their own.</p> <p>19 And it's worked out that way. We ended up</p> <p>20 buying another company, and we pay CDK \$350 a month for</p> <p>21 over 800 dealers, which is quite a tidy sum, but it is</p> <p>22 a business intelligence piece of software that you have</p> <p>23 to have access to the total accounting information in</p> <p>24 the DMS. We have to have that in order to produce this</p> <p>25 product. And we pay a lot for it. I'm not familiar</p>

<p style="text-align: right;">61</p> <p>1 with what all we provide to them on an RCI basis, but I  2 know there's some. I don't know it's as extensive it  3 is in the agreement we have for the company known as  4 reverse risk.  5 <b>Q. And part of the idea was also that Reynolds</b>  6 <b>would take its applications and go in through 3PA; is</b>  7 <b>that correct?</b>  8 A. Yes. And then this reverse risk application,  9 this business intelligence application goes in  10 through 3PA, and we get that data, and we have  11 agreements with all the users of that product to get  12 that data from CDK. And so from a confidentiality  13 standpoint, it's a tight loop.  14 <b>Q. So you have a contract both with the dealer who</b>  15 <b>is using the app and also with 3PA; is that correct?</b>  16 A. That's correct.  17 <b>Q. We've looked through these documents and seen</b>  18 <b>how these contracts worked, and I'm going to ask you</b>  19 <b>some more questions of more documents as we go forward</b>  20 <b>in the next two days, but I'm curious why up to this</b>  21 <b>point in time Reynolds had not gotten its apps on the</b>  22 <b>CDK dealerships through 3PA?</b>  23 A. Well, I'm a little embarrassed to tell you what  24 happened. The company that we bought the reverse risk  25 product from were bandits, and they hacked CDK's</p>	<p style="text-align: right;">63</p> <p>1 <b>RCI. What is your understanding of why that hadn't</b>  2 <b>happened prior to this 2013-2015 time period?</b>  3 A. Well, they didn't need to before that because  4 they had their DMI, Authenticom, busily doing it for  5 them.  6 <b>Q. In that answer you said DMI and Authenticom.</b>  7 <b>Did you mean DMI and IntegraLink?</b>  8 A. IntegraLink. Excuse me. I get names confused.  9 I know a little bit about a lot of things, and of  10 course, the corollary to that is it means over time I  11 will know everything about nothing.  12 MR. COHEN: As Socrates said you would.  13 (A recess was taken.)  14 BY MR. ABRAHAMSEN:  15 <b>Q. We were speaking before the break about CX 4043</b>  16 <b>and the conversation you were having with Mr. Anenen in</b>  17 <b>this time period. In this time period, 2012 time</b>  18 <b>period, was there a difference in the messaging that</b>  19 <b>Reynolds had vis-à-vis the CDK messaging on the issue</b>  20 <b>of data security?</b>  21 A. (No response.)  22 <b>Q. My understanding is that at this time period,</b>  23 <b>Reynolds was quite publicly saying that it was not in</b>  24 <b>favor of dealers using third-party apps by giving out a</b>  25 <b>password and user name where CDK wasn't really saying</b></p>
<p style="text-align: right;">62</p> <p>1 systems to get the data. And we were horrified by that  2 and one of the first things we did was we went to ADP  3 and said, look, we want to be part of 3PA, and we know  4 it's going to be expensive for us to do it, but that's  5 what we want to do.  6 They said, well, fine, we'll go along with  7 that. And fortunately, the subject of how was the data  8 gotten beforehand never came up.  9 <b>Q. So who was doing the integration for that</b>  10 <b>product when you bought them?</b>  11 A. It was a young lady that knew about such things  12 that just logged on and sucked down information in the  13 form of reports. And they already had the software  14 built to parse through the reports to get the data that  15 they wanted.  16 <b>Q. How much more expensive was it going to be to</b>  17 <b>do it through 3PA?</b>  18 A. Well, I would have to get my calculator out and  19 calculate what \$350 a month times 800 dealers times  20 12 months a year and contrast that to the salary of a  21 very intelligent young lady, which is probably in the  22 hundred thousand dollars a year category. So it is  23 going to be more expensive, but it would be straight up  24 legal.  25 <b>Q. And CDK was going to put its apps in through</b></p>	<p style="text-align: right;">64</p> <p>1 <b>that same message. Am I correct?</b>  2 A. I don't have a specific knowledge on what they  3 say or don't say, but my belief was that they were not  4 saying anything like that. They were -- their message  5 kind of continued to be, well, whatever goes, which, in  6 my opinion, was certainly based on my understanding of  7 the NADA report, what they were doing is totally  8 contrary. And from a messaging standpoint, it was  9 really interesting that they are messaging about us and  10 against us was the fact that we were oppressive idiots,  11 which, in my opinion, was not the case at all.  12 <b>Q. So when you say they are messaging against you,</b>  13 <b>you mean they were trying to sell DMS systems by going</b>  14 <b>to dealers and saying that they shouldn't get Reynolds</b>  15 <b>because Reynolds had this bad policy on allowing third</b>  16 <b>parties to integrate into their DMS?</b>  17 A. That's correct. As part of their sales  18 process, they held out their approach as being superior  19 and more importantly, desirable for the dealer.  20 <b>Q. And was that having an effect in the</b>  21 <b>marketplace?</b>  22 A. I don't know what effect, but certainly no  23 potential for good effect.  24 <b>Q. I mean, at this time period in 2012/2013, was</b>  25 <b>CDK taking market share away from Reynolds?</b></p>



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1 A. In terms of rooftops, yes. As a matter of  
2 fact, ever since we bought Reynolds, there has been a  
3 steady drip of the interception -- leaving and  
4 converting to CDK.

5 **Q. And was one of the factors the reason they were**  
6 **leaving was because of this messaging that we've just**  
7 **been talking about on data security?**

8 A. I believe it was. There's no way to quantify  
9 that, but I believe it was certainly a factor. It  
10 was -- we looked at it as, well, dealers will want to  
11 do what they want to do, and if they want to do it,  
12 where it's a free-for-all as far as data access or  
13 whatever, we don't need that business. That's not --  
14 there is nothing good going to come out of that.

15 **Q. Was that part of the discussion you had with**  
16 **Mr. Anenen at the time the notes that we see in**  
17 **CX 4043?**

18 A. I did not discuss that with Mr. Anenen. That  
19 was considered to be competitive market information  
20 which I'm not supposed to be doing with my larger  
21 competitor.

22 **Q. Well, the first bullet is that you informed**  
23 **him, you threatened him that you were going to stop**  
24 **allowing them, CDK, to get access to your DMS; is that**  
25 **correct?**

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1 A. That's correct.

2 **Q. And you talked to him about the need to have**  
3 **more data security for personal information; is that**  
4 **correct?**

5 A. Yes. This is where the discussion which was  
6 referred to earlier this morning about there's  
7 different levels of security required for personal  
8 information, and I think it's now called NPII as  
9 opposed to things like vehicle inventories, which is  
10 information that's already publicly available on each  
11 dealer's website.

12 **Q. What did Mr. Anenen say when you brought up the**  
13 **fact that some of the information is personal**  
14 **information that's being bandied about?**

15 A. I think he was very, very clear about that.  
16 Before this, I already made clear that it was the  
17 personal information where we saw the giant liability  
18 floating around.

19 **Q. What was his response about his potential**  
20 **liability?**

21 A. He never made any reference or response to his  
22 personal liability. Again, CDK was a public  
23 corporation. Steve Anenen had been the manager over  
24 that division back when it was a division of ADP, and  
25 he had been the president since CDK had been spun off.

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1 But he was a typical CEO/employee of a large publicly  
2 held corporation. Those type of people tend to have  
3 different outlooks than people like me.

4 **Q. In what sense?**

5 A. Well, I'm the CEO of a private corporation, and  
6 I feel really in a sense completely responsible for  
7 things like this.

8 **Q. Whereas, how would you characterize**  
9 **Mr. Anenen's feeling on that?**

10 A. Laissez-faire.

11 **Q. In this 2012/2013 time period, was it your view**  
12 **that you would want CDK to adopt the same policy you**  
13 **had on data security?**

14 A. No. All I wanted them to do, only thing that  
15 was ever discussed was I want them out of our software.

16 **Q. Let me ask you to take a look at an**  
17 **Exhibit 4515. I'll ask you to take a look at it.**  
18 **CX 4515 has Bates REYCID0203876. It's a series of**  
19 **e-mails back and forth between several Reynolds**  
20 **employees. I don't believe Mr. Brockman's name is on**  
21 **the document, so I'll essentially be using it as a**  
22 **crutch to formulate my questions.**

23 **My first question, Mr. Brockman, is to identify**  
24 **one of the individuals here. The very top of the page,**  
25 **the very first line on the exhibit says that the e-mail**

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1 **is from Chuck Hoyt. Who is Chuck Hoyt?**

2 A. Chuck Hoyt is the vice president of sales. His  
3 region covers probably 10 states, 12 states, and he is  
4 based out of, I think, the Detroit area. He actually  
5 lives west of Detroit.

6 **Q. And the first e-mail in the chain, which means**  
7 **the bottom e-mail on the exhibit, Tuesday, August 13,**  
8 **2013, and the title of the e-mail, the subject line of**  
9 **the e-mail is Captcha Codes. Let me first ask you to**  
10 **explain for the record what captcha codes meant in this**  
11 **context.**

12 A. Captcha codes are a device which is intended  
13 and really works pretty well to make sure that the  
14 answer is being replied to by a person as opposed to a  
15 computer. And it's a way to deny automated access to  
16 our software.

17 **Q. And as I understand it, in approximately this**  
18 **time period, these captcha codes were put on the**  
19 **Reynolds DMS; is that correct?**

20 A. Yes.

21 **Q. Was this the first time Reynolds had put**  
22 **captcha codes on its DMS?**

23 A. Probably not, but it was the most significant  
24 time. And it was in a place where it probably impacted  
25 a greater number of people, users in the dealership,



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1 than before.

2 **Q. Why was it more pervasive this time than**  
3 **before?**

4 A. Well, security is overhead for users.

5 **Q. I'm sorry?**

6 A. Users see data security as a, "god, why do we  
7 need this." That's kind of their outlook and attitude.  
8 And have you ever filled out a captcha screen?

9 **Q. I believe so. That's where you identify**  
10 **pictures; is that correct?**

11 A. Yeah, pictures or distorted numbers or  
12 distorted letters, whatever. They are least  
13 aggravating when you get them correct the first time.  
14 If you don't get them correct the first time, then you  
15 start to growl a little bit and about the third or the  
16 fourth time, you start to throw up your hands. Once  
17 people get used to captcha, they know how to interpret  
18 what the symbols are and get them over to letters and  
19 numbers as intended. But there was definitely, out of  
20 the Serra organization, there was some real grumbling.

21 **Q. Who is the Serra organization?**

22 A. It's a dealership group that's based out of  
23 Detroit, I think. Certainly that area.

24 **Q. I assume -- correct me if I'm wrong. I assume**  
25 **the grumbling was because they had certain automated**

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1 **access from third parties on their dealers and that**  
2 **those captcha codes were now disabling whatever apps**  
3 **the dealers were using; is that correct?**

4 A. I can't tell from this e-mail exchange whether  
5 that was the case or whether it was simply people,  
6 users that were dealership employees and legitimate  
7 users having to go through the overhead of captcha.

8 **Q. Did this frustration about the captcha codes**  
9 **percolate up to your level?**

10 A. Oh, yeah. Particularly, Serra was a large  
11 customer, and in this particular instance, I would have  
12 heard about this. And the security, it's an  
13 interesting situation in that we can make things, I  
14 mean, totally secure and lose all kinds of customers.  
15 From a business standpoint, there's a tradeoff because  
16 we find that particularly with the larger customers,  
17 they basically agree with us. The dealers basically  
18 agree with us. They know that there's a need for  
19 security. They know that a significant part of their  
20 IP is tied up in their customer records. These are  
21 very valuable assets for a dealership corporation, but  
22 they don't want waves made for their employees.

23 So what will happen with somebody like Serra,  
24 you may have to back off a little bit and then wait a  
25 month or two and then go forward, because that's what

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1 the dealer really wants to do. What will happen is  
2 that in that first segment of time, the users within  
3 the dealership will become accustomed to captcha or  
4 whatever the particular technique that we are using at  
5 the time. And once they've mastered it, then they can  
6 take a little more without disrupting their life,  
7 without degrading their performance from a throughput  
8 standpoint regarding what they are having to do with  
9 the computer screens.

10 **Q. So the security issue in putting in captcha**  
11 **codes is there are two components to that. There's**  
12 **sort of a technology component and then there's also**  
13 **sort of the business reality component; is that**  
14 **correct?**

15 A. Yes.

16 **Q. And at this point in time in 2013, had you**  
17 **gotten to the point where at least from a technological**  
18 **standpoint you could pretty thoroughly block what you**  
19 **refer to as hackers on your system?**

20 A. We made a lot of progress, but we were not in a  
21 state of perfection because security, as security  
22 changed or security enhancement that the third parties  
23 can never find their way around is really good, but  
24 there's not very many of those. And what will happen  
25 and more typically is we'll put in a new process that

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1 will block an outside hacker for a while.

2 Then they do things like we've had one  
3 situation where whenever -- let me see if I can  
4 describe this correctly. There's a third party comes  
5 in and they are looking like a person at a terminal.  
6 Then what we do is we pop up a captcha because we are  
7 trying to figure out whether it's a machine or a  
8 person. They will contract somebody in Vietnam to be  
9 kind of watching over the shoulders of our screens.  
10 And as a human, they can figure out the captcha, and  
11 that lets the third party invader in. They have,  
12 quote, defeated captcha. Well, that's not really a  
13 very good way, but a poor way is better than none. And  
14 so we have situations like that occur.

15 There's all manner of different strategies.  
16 They change the classification of the person. They'll  
17 make them a systems specialist that works for the  
18 dealership, and we will let -- unintentionally, we'll  
19 end up letting some of those people through because  
20 they have a special status and they are responsible for  
21 the administration of the system, they are responsible  
22 for the password -- dealer passwords for everybody in  
23 the organization.

24 **Q. Was one of your concerns when you put in a**  
25 **captcha that was widespread, was that ultimately it**

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1 could anger dealers so much that they might go to a  
2 different DMS provider?

3 A. Clearly.

4 **Q. Did that happen?**

5 A. I can't point to a specific instance, but I'm  
6 sure it happened. It is -- from a business standpoint,  
7 we have two different extremes. One extreme is as we  
8 have lax security, it would be a hell of a lawsuit  
9 versus having security that's so tight that it angers  
10 customers and they leave us. And I'm kind of in the  
11 midst of that.

12 **Q. Let me show you an exhibit that we've marked as**  
13 **CX 4004 and ask you to take a look at it. CX 4004 has**  
14 **Bates REYCID0042299, and it's a series of e-mails, and**  
15 **Mr. Brockman is on at least one of them.**

16 So my understanding of this exchange of e-mails  
17 is that there had been integration going on with  
18 IntegraLink and DMI with regard to certain vendors that  
19 dealers wanted to use and that those connections had  
20 been interrupted. And then the people at DMI and  
21 IntegraLink had been telling dealers that -- and I'm  
22 looking at the first sentence of the top e-mail -- the  
23 second sentence of the top e-mail, "Please understand  
24 that R&R is one hundred percent responsible for this  
25 situation."

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1 Is that an accurate reading of the e-mails?

2 A. Unfortunately, yes.

3 **Q. So what is your reaction when -- this came to**  
4 **your attention? Your name is on the e-mail. What was**  
5 **your reaction to this position that IntegraLink and DMI**  
6 **were taking?**

7 A. I was clearly not happy about that at all and  
8 which is one of the reasons why that I became more and  
9 more demanding of CDK to get out of our sites.

10 **Q. When you say more and more demanding of CDK,**  
11 **how were you being more demanding of CDK?**

12 A. Because I was telling their CEO that I was  
13 beginning to lose patience and that I was -- if  
14 necessary, I was going to flip the switch and all their  
15 stuff would be blocked and there would be no  
16 opportunity for a rational stand down.

17 **Q. In this time period, was there also issues with**  
18 **OEMs becoming blocked from being able to use their apps**  
19 **because of these security enhancements?**

20 A. Not really very much. I think in some cases  
21 rather than insert a third party between us and the  
22 OEM, we were dealing directly with the OEM. And that  
23 straightened the situation up a lot.

24 **Q. But were some OEMs using DMI to integrate?**

25 A. Yes.

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1 **Q. And were they getting blocked at times?**

2 A. I would presume so.

3 **Q. Did their anger ever reach your level?**

4 A. No.

5 **Q. The OEMs?**

6 A. No, because when the subject did come up with  
7 OEMs, we would say, guys, you all need to understand  
8 what's going on. Basically we are being hacked, okay.  
9 And DMI is ending up with data for which they are not  
10 authorized to have. They get it out of our system  
11 improperly.

12 And the OEMs understand about security a lot  
13 more. They are big corporations. Security is a major  
14 thing for them and has been. It's not new to them.  
15 They have been very sensitive all along. And I think  
16 in most cases at that point the conversation stopped.

17 **Q. Is this August 2013 time period, was this, the**  
18 **disruptions and the messaging that's being sent out by**  
19 **IntegraLink and DMI, did this end up resulting in more**  
20 **conversations between Reynolds folks and CDK folks**  
21 **about the wind down agreement?**

22 A. I would say generally not because the  
23 conversation was really taking place between me and  
24 Steve Anenen.

25 **Q. How often did you talk to Mr. Anenen?**

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1 A. Very infrequently. Maybe months between  
2 conversations.

3 **Q. Would you call him or would he call you?**

4 A. I think in some cases both or I would call him  
5 and request a call back.

6 **Q. And we are going to talk next about a meeting**  
7 **that Mr. Schaefer had with Mr. Gardner in September of**  
8 **2013. Were you aware that Mr. Schaefer was going to**  
9 **meet with Mr. Gardner?**

10 A. It was Bob Schaefer's job to interface with all  
11 RCI customers and the OEMs, and as part of that he had  
12 conversations, I'm sure, with CDK people.

13 **Q. We're going to show you some documents about a**  
14 **particular meeting in September of 2013. Do you recall**  
15 **a situation where Mr. Schaefer informed you that he was**  
16 **going to meet with CDK in that time period?**

17 A. I'm sorry, I don't recall specifically.

18 **Q. Let me ask you to take a look at CX 1151.**  
19 **CX 1151 has Bates CDK\_CID\_01734952. It's a series of**  
20 **e-mails, including one to Mr. Brockman and one from**  
21 **Mr. Brockman.**

22 A. (Reviewing document.)

23 **Q. Mr. Brockman, I would like you to take a look**  
24 **at CX 1151-002, second page of the exhibit. And at the**  
25 **top of that page, there are three numbered paragraphs,**

<p style="text-align: right;">77</p> <p>1 and I would like you to look at numbered paragraph 2.  2 And it states, "Reynolds and Reynolds indemnification  3 has been relaxed since we last exchanged documents."  4 What is your understanding of the extent to  5 which Reynolds and Reynolds had relaxed its  6 indemnification position?  7 A. I'm sorry, I don't recall specifically what was  8 going on. This document in general was written by Bob  9 Schaefer, is what it looks like, and covered all the  10 points that we wanted. Exactly what we were asking for  11 as far as indemnification I don't recall.  12 Now, the interesting part about this document  13 is it's dated in September. Well, my last really  14 serious conversation with the CDK CEO had happened much  15 earlier in the year. And what's happening here is that  16 Howard Gardner has finally been given authority to  17 actually get serious about getting out of our systems,  18 and to which I heaved a sigh of relief because I really  19 didn't want to go through this situation where I just  20 pull the plug on everything. I was going to, but I  21 really didn't want to.  22 Q. Because it would have angered the dealers?  23 A. Oh, yeah, it would have angered the dealers.  24 So the fact that this letter and what was happening  25 here was beginning to happen meant that finally Steve</p>	<p style="text-align: right;">79</p> <p>1 documents are being referenced in that paragraph?  2 A. I'm not sure. I would presume that there would  3 have been documents exchanged back and forth between  4 Bob Schaefer and Howard Gardner, but I had turned over  5 that process to Bob Schaefer and said, okay, they are  6 basically agreeing to our most central and most  7 strongest want; go ahead and work with them. So I  8 presume there were other documents before this.  9 Q. What was your most significant want?  10 A. For them to get out of our systems and stay  11 out.  12 Q. There is a numbered paragraph further down in  13 the same second page of this Exhibit CX 1151-002 midway  14 down the page, and it references OEMs. And I won't  15 read the whole paragraph into the record, but it talks  16 in the first sentence about DMI will formalize and  17 extend our collaborative approach to helping OEMs.  18 What was your understanding of what the collaborative  19 approach had been with OEMs up to that point?  20 A. It's my understanding that what we were working  21 towards is -- we'll take General Motors. If General  22 Motors wants data out of Reynolds dealerships, we are  23 the ones that provide the data. Likewise, if CDK wants  24 to give data to the OEMs from CDK dealerships, that's  25 fine. That's their bailiwick. But the important part</p>
<p style="text-align: right;">78</p> <p>1 Anenen had seen the handwriting on the wall, that I was  2 serious, and he had given authority to go ahead and  3 work out an agreement.  4 Q. Just so the record is clear and we are clear,  5 Mr. Gardner writes the e-mail that begins at the sort  6 of bottom third of the first page of CX 1151. So the  7 bulk of this exhibit is authored by Mr. Gardner at CDK;  8 is that correct?  9 A. Yes. But I think as it's written, I think that  10 there are big pieces of this that actually came out of  11 our requirements to them. They are basically saying,  12 okay, and they are restating what they are saying okay  13 to.  14 Q. When you said in that answer Reynolds'  15 requirements to CDK, what were you referring to?  16 A. Well, there was other communications, I presume  17 in writing, from Bob Schaefer to people like Howard  18 Gardner saying, look, when we say get out of our  19 system, we mean all the way out. Not only now but  20 forever out.  21 Q. In that same paragraph that we were looking at  22 on CX 1151-002 numbered paragraph at the top of the  23 page 2, the sentence which I read part of it into the  24 record, contains a clause midway through the sentence  25 that says "since we last exchanged documents." What</p>	<p style="text-align: right;">80</p> <p>1 is that just because they have a contract with an OEM  2 that requires data from Reynolds dealerships, no part  3 of this agreement is going to allow that to go forward.  4 That's part of the get out and stay out.  5 Q. So aside from maybe playing some role as an  6 agent, the idea here would be for CDK to stop doing  7 integration for the OEMs and have the OEMs have an  8 agreement with RCI; is that correct?  9 A. Um-hum, yeah. Yes.  10 Q. The last clause of the last sentence in  11 numbered paragraph number 1 talks about a smooth  12 transition for each OEM to a Reynolds certified  13 interface. And the last clause reads, "when Reynolds  14 is prepared to provide service." What was the issue  15 with Reynolds being prepared to provide service to the  16 OEMs?  17 A. The OEMs had special wants for data, and since  18 the RCI program that would be applicable to data  19 extraction forwarded to General Motors, there would be  20 software work that had to be done. Simply agreeing  21 that that's going to be the situation doesn't  22 necessarily mean we got the technical work done to  23 actually effect it, make it happen.  24 Q. So my understanding, and correct me if I'm  25 wrong, but this was a situation where if somebody like</p>

<p style="text-align: right;">81</p> <p>1 <b>DMI or IntegraLink was getting data from Reynolds'</b>  2 <b>dealers into the OEMs, even if there was an agreement</b>  3 <b>that that process would stop happening that way, there</b>  4 <b>was still going to be a lead time before RCI could, in</b>  5 <b>fact, get the data into the OEMs' hands; is that</b>  6 <b>correct?</b>  7 A. Correct.  8 <b>Q. Why were the OEMs using DMI to get access to</b>  9 <b>this data from the Reynolds DMSes?</b>  10 A. I would suspect that somebody from DMI was  11 knocking on the door offering it as a service. And you  12 have to understand that the DMI's position specifically  13 with General Motors changed over time. And one of the  14 important changes that happened was that when asked,  15 DMI would say, okay, we are collecting these pieces of  16 data, this field, this field, this field, this field.  17 Well, in fact, they were collecting a whole bunch more  18 that General Motors didn't even know about. And then  19 they were taking this additional data that they had  20 acquired as part of a GM-authorized process and selling  21 it in the open market.  22 And when we first figured that out, General  23 Motors was really surprised. And of course, DMI denied  24 it flat footed. And we had the traps. We had the data  25 traps to prove it. And we proved it up to General</p>	<p style="text-align: right;">83</p> <p>1 <b>could go to take the CDK data and the Reynolds data and</b>  2 <b>the Dealertrack data and give it all to General Motors</b>  3 <b>in one bundle and have all their dealers represented</b>  4 <b>through one report rather than through multiple</b>  5 <b>reports; is that correct?</b>  6 A. That's correct.  7 <b>Q. Did you discuss the OEMs transitioning to RCI</b>  8 <b>with Mr. Schaefer?</b>  9 A. I'm sure I did just because it was a topic, it  10 was a project that was open. And so I'm sure that I  11 did, but specifically what I talked about and when, I  12 don't remember.  13 <b>Q. I had asked you before I showed you CX 1151 if</b>  14 <b>you were aware of a meeting that Mr. Schaefer had with</b>  15 <b>Mr. Gardner in the fall of 2013. Having reviewed this</b>  16 <b>exhibit, is there anything about reading it that</b>  17 <b>refreshes your recollection about this particular</b>  18 <b>meeting that this document is discussing?</b>  19 A. Nothing specifically. I mean, everything here  20 is things that I would have expected to have been  21 discussed at that meeting.  22 <b>Q. And by this --</b>  23 A. And actually, when I say that meeting, there's  24 always a series of large and smaller meetings going on,  25 some of which get reported in print, many that don't.</p>
<p style="text-align: right;">82</p> <p>1 Motors, and they were very angry with DMI. And  2 therefore, switching over to getting things from us  3 straight and by contract and by program we got the  4 exact fields that are going to be delivered, that and  5 nothing else, nothing more, nothing less, they were  6 ready for that.  7 <b>Q. Was part of the DMI pitch to an OEM that they</b>  8 <b>would be able to provide them the data cheaper than</b>  9 <b>they could get it through RCI?</b>  10 A. I don't think so.  11 <b>Q. Then --</b>  12 A. But I don't know what DMI's prices were like.  13 But if I had to guess, the price was not an issue as  14 far as the manufacturers are concerned.  15 <b>Q. So why would they go with DMI rather than go to</b>  16 <b>RCI originally?</b>  17 A. Well, all the OEMs would dearly love to have  18 all the data they need all from one source all in one  19 format, and they would prefer not to do business with  20 multiple companies. They would rather do business with  21 just one. So part of the DMI sales pitch is, look,  22 we'll handle it all and you will get the data you need  23 in a pipeline that's got exactly what you want.  24 <b>Q. So General Motors, to use that example, would</b>  25 <b>have dealerships that had different DMSes. So DMI</b></p>	<p style="text-align: right;">84</p> <p>1 I mean, that's just the way that world works.  2 <b>Q. So you were aware that Mr. Schaefer was having</b>  3 <b>frequent communications with people at CDK on these</b>  4 <b>subjects?</b>  5 A. Yes. I would have expected that. It is a  6 nontrivial project because, of course, GM wants their  7 data uninterrupted, no change in format. They don't  8 want -- they want no changes at all, and they just want  9 their data.  10 <b>Q. And if they couldn't get their data, would that</b>  11 <b>be an instance where they could decertify a provider</b>  12 <b>such as yourself?</b>  13 A. I would say in extremis, yeah. We would be  14 very careful to get it right and did get it right.  15 <b>Q. The paragraph about the OEMs, the number 1</b>  16 <b>paragraph that we have been talking about makes</b>  17 <b>reference to a transition to a protected program. It's</b>  18 <b>in the second line down in that paragraph. What was</b>  19 <b>your understanding about what the protected program was</b>  20 <b>going to be?</b>  21 A. Well, what it meant was and that's that we  22 would continue with our security enhancements, but as  23 part of the stand down, we would turn off interruption  24 to CDK as long as they were proceeding as they are  25 supposed to through the turndown -- or not the</p>



<p style="text-align: right;">85</p> <p>1 turndown, but the -- so the whole project of standing</p> <p>2 down could proceed without ripples.</p> <p>3 <b>Q. Let me see if I understand it. Correct me if</b></p> <p>4 <b>I'm wrong. Whatever security measures Reynolds was</b></p> <p>5 <b>going to take generally, you would carve out an</b></p> <p>6 <b>exception under a protected program for CDK so that</b></p> <p>7 <b>those security measures wouldn't block the data from</b></p> <p>8 <b>going to the OEMs; is that correct?</b></p> <p>9 A. Correct.</p> <p>10 (A recess was taken.)</p> <p>11 BY MR. ABRAHAMSEN:</p> <p>12 <b>Q. Mr. Brockman, I would like to continue to look</b></p> <p>13 <b>at CX 1151. Under the second numbered paragraph in the</b></p> <p>14 <b>lower part of the page, the heading of that paragraph</b></p> <p>15 <b>is Non-OEM Third Parties. And my understanding of this</b></p> <p>16 <b>paragraph is this has to do primarily with applications</b></p> <p>17 <b>by companies that are not OEMs; is that correct?</b></p> <p>18 A. Yes, I believe that's correct.</p> <p>19 <b>Q. What was your understanding of how this</b></p> <p>20 <b>protected program would work?</b></p> <p>21 A. I think this referred to, first of all, DMI and</p> <p>22 IntegraLink and that -- that's my understanding.</p> <p>23 <b>Q. So these are the applications that are on</b></p> <p>24 <b>Reynolds dealerships using DMI or IntegraLink to get</b></p> <p>25 <b>the data off of those dealers' DMSes, and that will</b></p>	<p style="text-align: right;">87</p> <p>1 <b>There was going to be work that had to be done to</b></p> <p>2 <b>transition OEMs and apps from using DMI and IntegraLink</b></p> <p>3 <b>to get data to now getting that data through RCI, and</b></p> <p>4 <b>that was going to be an undertaking that had to be done</b></p> <p>5 <b>over the course of a period of time. But as you sit</b></p> <p>6 <b>here today, you are not aware of any new or additional</b></p> <p>7 <b>technology that had to be developed to make that</b></p> <p>8 <b>transition work; is that correct?</b></p> <p>9 A. That's correct.</p> <p>10 <b>Q. Let me ask you to look at paragraph number 4,</b></p> <p>11 <b>Exclusivity. I can read the sentence into the record.</b></p> <p>12 <b>"Exclusivity. Due to the investments in technology</b></p> <p>13 <b>required to establish and administer protected</b></p> <p>14 <b>programs, R&amp;R is open to the R&amp;R protective programs</b></p> <p>15 <b>becoming an exclusive offering by DMI."</b></p> <p>16 <b>What was your understanding of the exclusivity</b></p> <p>17 <b>that was going to be offered by DMI?</b></p> <p>18 A. As I recall, looking at this provision, this</p> <p>19 was a provision that really wasn't necessary being in</p> <p>20 here at all, because as the transition gets</p> <p>21 accomplished, there is no more -- when they talk about</p> <p>22 investments in technology required to establish and</p> <p>23 administer the protected programs, that's already all</p> <p>24 done as part of the previous processes. So I'm not</p> <p>25 quite sure exactly what's implied by this because as</p>
<p style="text-align: right;">86</p> <p>1 <b>become -- they'll change their way of doing that; is</b></p> <p>2 <b>that correct?</b></p> <p>3 A. Yes. What will happen is that all of such data</p> <p>4 extractions will convert to RCI.</p> <p>5 <b>Q. Was this what you were hoping to see from CDK</b></p> <p>6 <b>for some time at this point?</b></p> <p>7 A. Yes. This is the goal, to get them out of our</p> <p>8 hair.</p> <p>9 <b>Q. The next paragraph down is number 3, Technology</b></p> <p>10 <b>Investment. "R&amp;R and DMI will collaborate to define</b></p> <p>11 <b>and invest in the development of technology-based tools</b></p> <p>12 <b>that automate, accelerate, simplify and streamline the</b></p> <p>13 <b>process of setting up and managing the protected</b></p> <p>14 <b>programs for OEMs and third parties."</b></p> <p>15 <b>Did technology investments take place?</b></p> <p>16 A. Presumably so, because we, in fact, were able</p> <p>17 to convert OEM and non-OEM situations, and it all got</p> <p>18 done. So whatever we had to do to do that, we did.</p> <p>19 <b>Q. Was there technology that had to be developed</b></p> <p>20 <b>that had not already existed in DMI and Reynolds?</b></p> <p>21 A. I'm sorry, I'm not knowledgeable of that. This</p> <p>22 project was a very, very difficult one to get started,</p> <p>23 but once it got going, I'm on to the next one.</p> <p>24 <b>Q. So you correct me if I'm wrong, but I'll give</b></p> <p>25 <b>you my understanding. We'll see if it's accurate.</b></p>	<p style="text-align: right;">88</p> <p>1 far as I know, DMI and IntegraLink and the third-party</p> <p>2 users that they represent, they didn't do anything</p> <p>3 more. Once it's set up and the data is being</p> <p>4 transferred as per contract, that's the end of the</p> <p>5 story. It's working.</p> <p>6 <b>Q. Is the notion that Reynolds will enter into</b></p> <p>7 <b>this agreement to have the data transferred from RCI</b></p> <p>8 <b>and IntegraLink to Reynolds but that exclusivity refers</b></p> <p>9 <b>to Reynolds not entering into a similar agreement with</b></p> <p>10 <b>any other integrator?</b></p> <p>11 A. Absolutely not. At this point I'm sure we</p> <p>12 still had some third parties out there that we had not</p> <p>13 reached agreement with and they had been finding ways</p> <p>14 to work around the security checks. And there is no</p> <p>15 way -- at this point, my happiness with CDK has</p> <p>16 increased a little bit, but it's still so far low that</p> <p>17 you can't hardly measure it.</p> <p>18 <b>Q. Did you talk to Mr. Schaefer about this</b></p> <p>19 <b>exclusivity provision -- we are going to look at your</b></p> <p>20 <b>e-mail back to Mr. Schaefer in a moment. But is this</b></p> <p>21 <b>exclusivity provision something you discussed with</b></p> <p>22 <b>Mr. Schaefer?</b></p> <p>23 A. I'm sorry, I don't recall. I may or may not.</p> <p>24 <b>Q. Did Reynolds have a protected program to get</b></p> <p>25 <b>its applications on the CDK DMSes?</b></p>



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1 A. As far as I know it did not, because it ended  
2 up that the reverse risk occurred at some period of  
3 time after this. And the young lady that was  
4 responsible for extracting data out of ADP systems, she  
5 was independent. She didn't require any help at all  
6 from ADP. And she just kept on extracting and keeping  
7 that product running as it was transitioned over,  
8 because you don't transition 800 dealerships overnight.  
9 That had to be built. And we had an RCI on our side  
10 that used 3PA to get the data out, but then there's all  
11 kinds of formatting that you got to worry about to get  
12 it into the right format to go into the reverse risk  
13 system.

14 **Q. Let me see if I understand the explanation.**  
15 **When you referred to reverse risk, was it ultimately**  
16 **the plan that Reynolds would put reverse risk on to the**  
17 **CDK DMSes through CDK's 3PA program?**

18 A. No. It was -- the plan was and is, it still  
19 exists where we use 3PA to extract the accounting data  
20 and phase it into the reverse risk system which runs in  
21 the cloud to provide the capability to the dealerships  
22 to, you know, one button and you get to see all kinds  
23 of things. But it was never, ever thought to be a  
24 product that would actually run on an ADP DMS system.  
25 That would be -- I don't understand how the ADP DMS

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1 system is structured, how it's architected. And I  
2 don't want to know. So to even think about doing  
3 anything like that would have been, you know,  
4 unthinkable.

5 **Q. But ultimately there were Reynolds applications**  
6 **that went in through the 3PA program; isn't that**  
7 **correct?**

8 A. Well, this one here is an example of that, but  
9 the sole purpose was to extract data. Not actually  
10 have the product run on an ADP system. It was purely  
11 to extract data and lots of it.

12 **Q. Did it extract it through the 3PA program**  
13 **ultimately?**

14 A. Yes. Today it costs \$350 a month per dealer.  
15 Not cheap.

16 **Q. At the very bottom of the exhibit on this page,**  
17 **CX 1151-002, the sentence reads, "ADP would be open to**  
18 **adopting and advocating common industry standards**  
19 **and/or recommendations."**

20 **What was the common industry standards that you**  
21 **wanted ADP to be open to adopting?**

22 A. I interpret this one a little bit differently.  
23 I think that ADP is making a suggestion to adopt common  
24 industry standards, and that's not something we were  
25 ever interested in doing because I think common

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1 industry standards, that translates to me as somebody  
2 else gets to decide how things work besides us.

3 And well, this requires more explanation.

4 There has been attempts to establish common industry  
5 standards, and when it first came up, we thought that  
6 would be really cool. The problem is that  
7 manufacturers participate, and the manufacturers are  
8 big guns, and it started almost from the very first the  
9 manufacturers will say, yeah, we want to adopt industry  
10 standards, however, we want this little part to be done  
11 differently. So there are many variants of what common  
12 industry standards are for car dealers. That is, as  
13 far as we are concerned, madness from a programming  
14 standpoint. That means that there is that many more  
15 balls we got to keep in the air. And therefore, this  
16 thought here about common industry standards, I mean,  
17 that went nowhere. It was dead on arrival.

18 **Q. Was the notion that the common industry**  
19 **standard would be that both CDK and Reynolds would take**  
20 **the position that data should only go from the DMS**  
21 **provider and not be provided by a third-party**  
22 **integrator?**

23 A. There was no discussion along those lines at  
24 all.

25 **Q. That was Reynolds' position at this time; is**

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1 **that correct?**

2 A. Well, Reynolds' position at that time was that  
3 there would be no third-party access to our boxes.

4 **Q. And that's ultimately the position that CDK**  
5 **came down with; is that correct?**

6 A. Ultimately they did. I was surprised that they  
7 made that change some period of time after all this was  
8 done.

9 **Q. And that would have been a common industry**  
10 **standard that would have been beneficial to Reynolds in**  
11 **this 2013 time period because of the factors we've**  
12 **talked about before, how CDK was marketing against**  
13 **Reynolds, saying we are different, we have a different**  
14 **standard on security, you should join us, you should**  
15 **hire us to be your DMS provider, you should not go to**  
16 **Reynolds, and that would be a major benefit to Reynolds**  
17 **if that -- if they professed a different standard and**  
18 **turned 180 degrees in the other direction and stopped**  
19 **doing that market messaging to you?**

20 A. Again, none of that was under any consideration  
21 in this whole process right here. I fully expected to  
22 have dirty tricks come out of the relationship as far  
23 as this whole process is concerned with ADP. I was  
24 looking forward to being out first and foremost and not  
25 thinking about anything else.

<p style="text-align: right;">93</p> <p>1 <b>Q. What was your reference to dirty tricks in the</b>  2 <b>answer?</b>  3 A. Well, a classic dirty trick in this kind of  4 situation which, fortunately, didn't happen but could  5 have happened, where they start sending data to us  6 coming out of ADP systems and stuff is transposed. Not  7 much, but just a little. Or some stuff is left out or  8 extra junk put in. And it's, oh, I'm sorry, we had a  9 programmer that screwed up. Okay, tell me about that.  10 Those are dirty tricks that happen.  11 <b>Q. So in that example, you are referring to a</b>  12 <b>situation where Reynolds would be having a Reynolds app</b>  13 <b>on a CDK dealer and somehow that dealer would not get</b>  14 <b>satisfactory results from its Reynolds app because of</b>  15 <b>an alleged programming issue; is that correct?</b>  16 A. That certainly, but what I was more focused on  17 was in this transition period where we are endeavoring  18 to get dealerships that have been getting their data by  19 extraction processes through RCI. Well, if they mess  20 up the extraction processes while all this transition  21 is going on, that would be a dirty trick.  22 <b>Q. And you say pretty much everything, the</b>  23 <b>transition went smoothly from your perspective?</b>  24 A. That fear did not come to reality.  25 <b>Q. We are still on CX 1151 looking at the first</b></p>	<p style="text-align: right;">95</p> <p>1 to participate in the building of this new system.  2 They felt like they had the need for programmers  3 experienced in the new ways of programming, and they  4 wouldn't let the people that really knew everything  5 participate. They started with a whole bunch of fresh  6 programmers that didn't understand automotive at all.  7 They spent probably a quarter of a billion dollars for  8 a system which ultimately failed.  9 They actually had to withdraw it from the  10 marketplace. They had to make special provisions to  11 basically buy dealerships out of their contracts and  12 convert them back to Era. I would imagine probably,  13 though I have never talked to him about it in detail,  14 Bob Schaefer had some choice things to say about that  15 whole process, because what had happened was that the  16 new programmers knew how to build pretty screens,  17 pretty reports, but they had no knowledge of all the  18 interior logic that had been built up over the years.  19 And so when a dealer converted from Era to this new  20 system, things didn't work.  21 <b>Q. What was the new system called?</b>  22 A. It was called Generations. Scott, do you  23 remember?  24 MR. CHERRY: That's correct.  25 THE WITNESS: Generations is correct, okay.</p>
<p style="text-align: right;">94</p> <p>1 <b>page of the exhibit. There is in the middle of the</b>  2 <b>page an e-mail from Mr. Schaefer to you, and he starts</b>  3 <b>out his e-mail to you with the phrase, "per our</b>  4 <b>conversation." Was this a conversation you had with</b>  5 <b>Mr. Schaefer about the substance of Mr. Gardner's</b>  6 <b>e-mail?</b>  7 A. I don't know specifically about Mr. Gardner's  8 e-mail, but it was about the whole issue and situation.  9 And what Bob Schaefer wanted is he wanted in writing  10 what he was empowered to do. And Bob Schaefer is a  11 quite talented person. In addition to the fact that  12 some of his basketball school records at Wright State  13 University still stand is kind of amazing.  14 But he was actually in charge of development  15 for Reynolds in the period of time before I got there.  16 And actually, when I got there, supposedly he was --  17 his neck was on the chopping block. He was going to be  18 fired. And the fact that I came along and I said, you  19 know, you guys got to be crazy; this guy is a bright  20 guy; he knows all kinds of stuff; he invented the hub,  21 he owns a patent on the hub, absolutely not.  22 What I think happened was there had been a huge  23 development failure at Reynolds before we got there.  24 They had decided to build a whole new DMS, and they  25 refused to allow the existing programmers at Reynolds</p>	<p style="text-align: right;">96</p> <p>1 But at any rate, my observations and decisions as far  2 as Bob Schaefer is concerned turned out to be exactly  3 correct. He's been a very is valuable person.  4 BY MR. ABRAHAMSEN:  5 <b>Q. And then you sent him back an e-mail which</b>  6 <b>says, "You have authority to pursue discussions with</b>  7 <b>ADP on these subjects as per our conversation."</b>  8 A. Yeah, this is where the point about him almost  9 getting fired when I fist got there. Evidently, he had  10 had his legs cut out underneath him by the previous  11 administration. And he was very, very sensitive about  12 whenever he has something to do, that he has  13 authorization to do it. So any time somebody climbs  14 him about what he's doing, he can open his drawer and  15 say, I got the letter, see, which is a sad situation  16 for that level of lack of trust. But he started that  17 process with me, and I felt like he was so sensitive  18 about it that we would continue that process.  19 <b>Q. Was it your understanding that he would then</b>  20 <b>pass on your e-mail to people at CDK so that they would</b>  21 <b>know that you had weighed in on it?</b>  22 A. I don't think that -- that's not what the point  23 was. The point was that within our organization  24 anybody that questioned his authority to discuss things  25 with ADP, he's got the letter or the e-mail that says</p>

<p style="text-align: right;">97</p> <p>1 that he's authorized. It would not cover him divulging</p> <p>2 things to CDK at all.</p> <p>3 <b>Q. You mentioned in a prior answer that the market</b></p> <p>4 <b>messaging position that Mr. Gardner had put in his</b></p> <p>5 <b>e-mail was dead on arrival. Was there some reason you</b></p> <p>6 <b>didn't address that in your e-mail back to</b></p> <p>7 <b>Mr. Schaefer, that you thought that particular</b></p> <p>8 <b>provision was dead on arrival?</b></p> <p>9 A. All this is so long ago, I don't remember if I</p> <p>10 thought about it or not thought about it.</p> <p>11 <b>Q. Did you talk to Mr. Schaefer about the</b></p> <p>12 <b>marketing message, the market messaging part of</b></p> <p>13 <b>Mr. Gardner's e-mail?</b></p> <p>14 A. I don't specifically recall that.</p> <p>15 MR. COHEN: Dana, I'm just going to lodge a</p> <p>16 clarification. I may be wrong, but I thought that his</p> <p>17 dead on arrival testimony related to the industry</p> <p>18 standards provision. But I could be wrong about that.</p> <p>19 If I'm right, then you have mischaracterized his</p> <p>20 testimony. If I'm wrong, my objection is meaningless.</p> <p>21 But anyway, I simply wanted to let the record reflect</p> <p>22 my understanding of that prior testimony.</p> <p>23 BY MR. ABRAHAMSEN:</p> <p>24 <b>Q. And I will try to clarify the record. The</b></p> <p>25 <b>market messaging paragraph states that ADP would be</b></p>	<p style="text-align: right;">99</p> <p>1 <b>paragraph about market messaging ends with a</b></p> <p>2 <b>parenthetical where Mr. Gardner is giving an example.</b></p> <p>3 <b>His example is "through or in conjunction with an</b></p> <p>4 <b>industry organization such as NADA."</b></p> <p>5 <b>Was there discussion between you and</b></p> <p>6 <b>Mr. Schaefer about whether it would be satisfactory to</b></p> <p>7 <b>Reynolds to do a common market messaging through NADA?</b></p> <p>8 A. I'm sorry, but my answer is the same. This is</p> <p>9 an exquisitely fine detail that I'm sorry I just don't</p> <p>10 recall.</p> <p>11 <b>Q. Let me ask you a broader question. Taking our</b></p> <p>12 <b>eyes off this exhibit for a moment so I can broaden the</b></p> <p>13 <b>question, was there a time in the 2013 to 2015 time</b></p> <p>14 <b>period where you were interested in CDK and Reynolds</b></p> <p>15 <b>getting together in a public forum such as NADA and</b></p> <p>16 <b>making a joint announcement about market messaging as</b></p> <p>17 <b>it relates to data security?</b></p> <p>18 A. I was not really interested in doing that at</p> <p>19 all. I don't trust the people at ADP. Never have. I</p> <p>20 have been competing robustly against them since 1975.</p> <p>21 I don't want to do anything with them that I can</p> <p>22 possibly avoid. It has to be a really, really good</p> <p>23 opportunity.</p> <p>24 <b>Q. Let me ask you to take a look at an exhibit</b></p> <p>25 <b>we've marked as CX 4035. I'll ask you to take a look</b></p>
<p style="text-align: right;">98</p> <p>1 <b>open to adopting and advocating common industry</b></p> <p>2 <b>standards.</b></p> <p>3 MR. COHEN: We are on the same page, then.</p> <p>4 BY MR. ABRAHAMSEN:</p> <p>5 <b>Q. So when I phrased my question as whether you</b></p> <p>6 <b>spoke with Mr. Schaefer about market messaging, did you</b></p> <p>7 <b>understand my question to encompass the part of that</b></p> <p>8 <b>paragraph that talked about advocating common industry</b></p> <p>9 <b>standards?</b></p> <p>10 A. Again, my answer is the same. We are now down</p> <p>11 really into the weeds, and my memory just is not that</p> <p>12 good.</p> <p>13 <b>Q. So just to make sure the record is clear on</b></p> <p>14 <b>this point of common industry standards, you don't</b></p> <p>15 <b>recall whether or not you talked to Mr. Schaefer about</b></p> <p>16 <b>that part of Mr. Gardner's e-mail; is that correct?</b></p> <p>17 A. That's correct.</p> <p>18 MR. COHEN: Thank you. I think that was an</p> <p>19 unnecessary detour on my part, but I appreciate the</p> <p>20 clear record.</p> <p>21 BY MR. ABRAHAMSEN:</p> <p>22 <b>Q. I flipped the page on the market messaging</b></p> <p>23 <b>paragraph and realized there was a reference at the end</b></p> <p>24 <b>on the next page that I had overlooked when we were</b></p> <p>25 <b>speaking about this before in CX 1151-003. The</b></p>	<p style="text-align: right;">100</p> <p>1 <b>at it. CX 4035 bears Bates REYCID0263974.</b></p> <p>2 A. (Reviewing document.)</p> <p>3 <b>Q. My understanding is that these are notes that</b></p> <p>4 <b>you made to yourself for a telephone call with</b></p> <p>5 <b>Mr. Anenen; is that correct?</b></p> <p>6 A. That's correct.</p> <p>7 <b>Q. There is an indentation on the first page of</b></p> <p>8 <b>the notes that have five subparagraphs, and I wanted to</b></p> <p>9 <b>ask you about the bottom of the five. It begins with,</b></p> <p>10 <b>"Therefore, I want a no-charge access to ADP systems</b></p> <p>11 <b>for the next 20 years." Do you see that?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. And what was your ask here in terms of the</b></p> <p>14 <b>20 years?</b></p> <p>15 A. The ask was that I was to be able to -- for</p> <p>16 Reynolds products, for instance, like reverse risk, the</p> <p>17 reverse risk, we didn't know anything about that at the</p> <p>18 time. That was a much, much later event. To be able</p> <p>19 to access 3PA's approach to ADP's systems for no charge</p> <p>20 in view of the fact that they have been taking theirs</p> <p>21 and they had been paying nothing for over 20 years.</p> <p>22 They've been extracting data on our systems.</p> <p>23 <b>Q. And what did Mr. Anenen have to say about that</b></p> <p>24 <b>proposal?</b></p> <p>25 A. I don't know. I didn't talk to him directly</p>

<p style="text-align: right;">101</p> <p>1 about that proposal. He, unsurprisingly, was not happy</p> <p>2 with that. But I was pretty adamant.</p> <p>3 <b>Q. At the end of that same paragraph, you make the</b></p> <p>4 <b>point that you want it used only for a product that</b></p> <p>5 <b>Reynolds offers.</b></p> <p>6 A. Yeah, this is in no way to be considered a data</p> <p>7 extraction for resale to third parties. It was only to</p> <p>8 facilitate a product that we provide to dealerships</p> <p>9 that use CDK and that's it.</p> <p>10 <b>Q. Why was that a significant point for you to</b></p> <p>11 <b>make?</b></p> <p>12 A. Well, because I would be hypocritical if I</p> <p>13 acted otherwise because what I'm doing is I'm demanding</p> <p>14 the rules that they have to follow. Therefore, it's</p> <p>15 appropriate that I need to follow them too.</p> <p>16 <b>Q. The third slash down in this same indented</b></p> <p>17 <b>paragraph states that ADP has wrongly taken advantage</b></p> <p>18 <b>of Reynolds in the marketplace over the issue of data</b></p> <p>19 <b>security and has cost us in the millions.</b></p> <p>20 <b>Is that the issue we have been speaking about</b></p> <p>21 <b>earlier where CDK was selling against Reynolds on this</b></p> <p>22 <b>issue of data security?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. The third slash mark from the bottom of the</b></p> <p>25 <b>first page of this exhibit speaks again about</b></p>	<p style="text-align: right;">103</p> <p>1 security enhancements I understand. That's pretty</p> <p>2 simple and straightforward. But the rest of them get</p> <p>3 pretty exotic, and I'm frankly -- I would love to have</p> <p>4 time to sit with the programmers to understand exactly</p> <p>5 what they do, but that's a luxury that I don't get to</p> <p>6 have.</p> <p>7 <b>Q. And am I reading this correctly, you'll correct</b></p> <p>8 <b>me if I'm wrong, but you are saying you have held up</b></p> <p>9 <b>the security enhancements, you have held them up in the</b></p> <p>10 <b>hopes that you'll be able to figure out a way to not</b></p> <p>11 <b>apply them to the CDK integrations that are going on?</b></p> <p>12 <b>Is that accurate?</b></p> <p>13 A. Yes, because that would dislocate a lot of</p> <p>14 customers and there would be a lot of heat and anger</p> <p>15 over the whole situation. These two months worth of</p> <p>16 security enhancements that are being held up are the</p> <p>17 ones that would finally disable them, that would</p> <p>18 disable ADP access to our boxes.</p> <p>19 <b>Q. Right. So it was getting back to what we</b></p> <p>20 <b>talked about earlier this morning that the technology</b></p> <p>21 <b>was there to block, but the business problems were</b></p> <p>22 <b>still a problem.</b></p> <p>23 A. Exactly.</p> <p>24 <b>Q. How did you know that -- I'm looking at the</b></p> <p>25 <b>second-to-last bullet on this page. You make a</b></p>
<p style="text-align: right;">102</p> <p>1 indemnification, and it reads, "indemnification has</p> <p>2 been dealt with."</p> <p>3 <b>Does this refresh your recollection at all</b></p> <p>4 <b>about what Reynolds had done with regard to</b></p> <p>5 <b>indemnification that had sort of cleared the way for</b></p> <p>6 <b>this -- what had previously been a stumbling block to</b></p> <p>7 <b>now be dealt with?</b></p> <p>8 A. I'm sorry, I don't recall.</p> <p>9 <b>Q. The second page of the exhibit, CX 4035-002,</b></p> <p>10 <b>the first sentence on that page says, "We have held up</b></p> <p>11 <b>on a large release of security enhancements for over</b></p> <p>12 <b>two months to see if there was a deal to be worked</b></p> <p>13 <b>out."</b></p> <p>14 <b>What security enhancements were you referring</b></p> <p>15 <b>to?</b></p> <p>16 A. There were a bundle of security enhancements.</p> <p>17 I don't know specifically. As a matter of fact, I</p> <p>18 don't know how any of them -- well, most security</p> <p>19 enhancements, I don't understand how they work.</p> <p>20 There's been a couple of simple ones such as we verify</p> <p>21 that the employee status of a person that holds access</p> <p>22 to a Reynolds computer system by going over the payroll</p> <p>23 system and checking to see if they are on payroll. If</p> <p>24 they are not on the payroll system, that's a good</p> <p>25 indication they are a third party. So that kind of</p>	<p style="text-align: right;">104</p> <p>1 reference here to hundreds of third parties. How did</p> <p>2 you know how many third parties DMI and Integralink</p> <p>3 were working with?</p> <p>4 A. That number had been mentioned in the</p> <p>5 discussions that had been ongoing between Bob Schaefer</p> <p>6 and the ADP people. I was not -- prior to this whole</p> <p>7 process, I was not aware of how many they had. I</p> <p>8 presumed it to be a pretty good size because they had</p> <p>9 been in the business of doing this for 20 years or</p> <p>10 more.</p> <p>11 <b>Q. During the phone call with Mr. Anenen, did you</b></p> <p>12 <b>talk about other integrators that were in the market</b></p> <p>13 <b>such as Authenticom or any of the others?</b></p> <p>14 A. No.</p> <p>15 <b>Q. At this time point, I'm going to go back to the</b></p> <p>16 <b>paragraph we started out talking about, the one that</b></p> <p>17 <b>referenced the next 20 years. Was there any hesitancy</b></p> <p>18 <b>on the part of CDK to allow Reynolds to use 3PA to</b></p> <p>19 <b>access its apps on to the CDK DMSes?</b></p> <p>20 A. There's never been occasion for a conversation.</p> <p>21 And frankly, when all this was going on -- and</p> <p>22 remember, this is a list of talking points for a</p> <p>23 telephone conversation that I had hoped was going to</p> <p>24 happen within a month or two. It didn't happen for</p> <p>25 seven or eight months. But frankly, I didn't even</p>



<p style="text-align: right;">105</p> <p>1 understand that they had a 3PA process at all until</p> <p>2 further on in this particular process.</p> <p>3 <b>Q. What was your sense of why the process was</b></p> <p>4 <b>taking so long to play out?</b></p> <p>5 A. They were stalling.</p> <p>6 <b>Q. Why would they be stalling?</b></p> <p>7 A. Well, frankly, they didn't want this all to</p> <p>8 happen at all. They were being forced into it. So</p> <p>9 therefore, what they did is they drug their feet. And</p> <p>10 as is typical in a negotiation that you give the other</p> <p>11 party an opportunity to act in good faith presumably to</p> <p>12 start with. When it doesn't quite work out that way,</p> <p>13 then it becomes much more difficult. It becomes</p> <p>14 tougher.</p> <p>15 <b>Q. Were there instances where you threatened CDK</b></p> <p>16 <b>if they didn't move forward on this agreement?</b></p> <p>17 A. Yeah.</p> <p>18 <b>Q. What did you threaten them with?</b></p> <p>19 A. I said, look, you are going to wake up one</p> <p>20 morning and nothing is going to work as far as your</p> <p>21 accessing of the Reynolds boxes. And so therefore,</p> <p>22 whatever you are supposed to be doing for your</p> <p>23 customers, you are going to be up a tree, which is a</p> <p>24 very serious decision, and I thought long and hard</p> <p>25 about it, but I didn't want to cause the upset that it</p>	<p style="text-align: right;">107</p> <p>1 <b>Q. I'm going to ask you a series of the same</b></p> <p>2 <b>questions, but I'm going to ask you whether the</b></p> <p>3 <b>conversations took place between Mr. Schaefer and</b></p> <p>4 <b>anyone at CDK. Are you aware of whether Mr. Schaefer</b></p> <p>5 <b>conveyed these sort of threats, that there would be</b></p> <p>6 <b>blocking of the CDK DMSes if progress wasn't made on</b></p> <p>7 <b>the contracts that we have been talking about?</b></p> <p>8 A. I would feel quite certainly that he did have</p> <p>9 conversations that covered those subjects because there</p> <p>10 wasn't -- my meeting with Steve Anenen and then a long</p> <p>11 period of silence from our side. People on the ground</p> <p>12 doing the work who were personally invested in how</p> <p>13 everything worked, I'm sure that they got talked to by</p> <p>14 Bob Schaefer.</p> <p>15 <b>Q. The last bullet on the first page of CX 4035</b></p> <p>16 <b>makes reference to Mr. Workman and that he has</b></p> <p>17 <b>reported -- I understood it to mean he had reported to</b></p> <p>18 <b>you that your interface request could only be approved</b></p> <p>19 <b>by Mr. Anenen. Am I reading that correctly?</b></p> <p>20 A. Yes, but as far as I don't think Ron Workman</p> <p>21 reported that to me. He probably reported it to Bob</p> <p>22 Schaefer because again, I was not talking directly to</p> <p>23 anybody at CDK other than Steve Anenen.</p> <p>24 <b>Q. So Mr. Workman could have made that</b></p> <p>25 <b>representation to Mr. Schaefer, and then it would have</b></p>
<p style="text-align: right;">106</p> <p>1 would have caused in the marketplace generally. My</p> <p>2 wants were simple. I wanted them out of our boxes.</p> <p>3 And it took me a while to get to the point from a</p> <p>4 resolution standpoint that if they didn't do it, I was</p> <p>5 going to shut them off.</p> <p>6 <b>Q. Did you make those representations about</b></p> <p>7 <b>shutting CDK off directly to Mr. Anenen?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Did you make those representations to anyone</b></p> <p>10 <b>else at CDK?</b></p> <p>11 A. No.</p> <p>12 <b>Q. Did you have conversations with anyone at CDK</b></p> <p>13 <b>other than Mr. Anenen on the subjects that we have been</b></p> <p>14 <b>talking about today?</b></p> <p>15 A. No.</p> <p>16 <b>Q. Did you ever talk to Mr. Workman?</b></p> <p>17 A. Not about these subjects. And Ron Workman, I</p> <p>18 would -- one of the few decent people in that</p> <p>19 organization. A good guy.</p> <p>20 <b>Q. How did you know Mr. Workman?</b></p> <p>21 A. Well, the setting up of the ODE relationship.</p> <p>22 He worked on the contracts on his side. I worked on</p> <p>23 them from our side.</p> <p>24 <b>Q. How long have you known Mr. Workman?</b></p> <p>25 A. That's probably in the ten-year park.</p>	<p style="text-align: right;">108</p> <p>1 <b>come up to you through Mr. Schaefer. Is that my</b></p> <p>2 <b>understanding?</b></p> <p>3 A. That is correct.</p> <p>4 (Discussion off the record.)</p> <p>5 BY MR. ABRAHAMSEN:</p> <p>6 <b>Q. A little earlier today we were talking about</b></p> <p>7 <b>the market message that DMS providers conveyed to the</b></p> <p>8 <b>market. We were talking about Reynolds' long-standing</b></p> <p>9 <b>position on data security, and we talked some about how</b></p> <p>10 <b>CDK had a different message to the market about its</b></p> <p>11 <b>view, I think you used the phrase laissez-faire view on</b></p> <p>12 <b>market security.</b></p> <p>13 <b>My question is what was the message on data</b></p> <p>14 <b>security that was being conveyed by the other DMS</b></p> <p>15 <b>providers such as Dealertrack and Autosoft and so on?</b></p> <p>16 A. Frankly, I'm not aware. From a DMS provider</p> <p>17 standpoint, Dealertrack, their DMS is small and weak.</p> <p>18 From the facility standpoint, it's kind of a get-by</p> <p>19 product that works for small dealers. We don't hear</p> <p>20 much about them at all in the marketplace.</p> <p>21 As far as the others, there's probably four or</p> <p>22 five others, but frankly, we don't pay any attention to</p> <p>23 those people because they are in a different market.</p> <p>24 They are selling to small dealers who don't really need</p> <p>25 very sophisticated systems.</p>



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1 **Q. Let me ask the question a slightly different**  
 2 **way. Was there -- did you have a sense in this**  
 3 **2012/2013/2014 time period that Reynolds was unique in**  
 4 **that it was offering a market message on data security**  
 5 **about being strong and vigilant about third-party usage**  
 6 **of user IDs and passwords and so on, and it was sort of**  
 7 **alone, that all the other DMS providers had a different**  
 8 **market message?**

9 A. I understood that to be the case, that we were  
 10 different and we were the only ones that were  
 11 different. But that's, as far as I'm concerned, a  
 12 perfectly satisfactory situation because I'm convinced  
 13 the way we are doing it is the right way. And the  
 14 other folks are doing it the wrong way, and the fact  
 15 that there's other folks doing it the wrong way means  
 16 nothing to me. Above all else, I want our stuff to be  
 17 right.

18 MR. ABRAHAMSEN: Why don't we go off the record  
 19 for today, and we'll resume tomorrow morning at 9:00 in  
 20 the same location.

21 (Whereupon, the proceedings at 1:02 p.m., were  
 22 adjourned.)  
 23  
 24  
 25

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1 CERTIFICATE OF REPORTER  
 2  
 3

4 I, Deborah Wehr, do hereby certify that the  
 5 foregoing proceedings were taken by me in stenotype and  
 6 thereafter reduced to typewriting under my supervision;  
 7 that I am neither counsel for, related to, nor employed  
 8 by any of the parties to the action in which these  
 9 proceedings were taken; and further, that I am not a  
 10 relative or employee of any attorney or counsel  
 11 employed by the parties hereto, nor financially or  
 12 otherwise interested in the outcome of the action.  
 13  
 14  
 15

16 s/Deborah Wehr  
 17 Deborah Wehr, RPR  
 18 Notary Public  
 19  
 20  
 21  
 22  
 23  
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## CDK Global &amp; Reynolds and Reynolds

9/18/2019

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